

EXHIBIT 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DALE SMITH,

Plaintiff,

v.

CHEVRON U.S.A., INC.;
NORTHWEST WHOLESALE, INC.; and
SYNGENTA CROP PROTECTION, LLC;

Defendants.

NO. 2:25-cv-00433-LK

AFFIDAVIT OF CHARLES P. STERN
IN SUPPORT OF PLAINTIFF'S
EMERGENCY MOTION TO
REMAND

I, CHARLES P. STERN, declare and state as follows:

I am one of the attorneys representing the Plaintiff, Mr. Smith, in *Smith v. Chevron U.S.A., Inc.; Et al.*; No. 2:25-cv-00433-LK. My *Pro Hac Vice* was filed and granted on March 13, 2025. I represented Mr. Smith in the removed King County Superior Court matter. I make this statement based on personal knowledge and involvement in this case.

1. Mr. Smith's case was filed on June 21, 2021, and Northwest Wholesale, Inc. ("NWW") was named in the original Complaint. See **Exhibit A**, Plaintiff's Complaint. Service was perfected on NWW on June 29, 2021. See **Exhibit B**, Proof of Service, dated June 30, 2021.
2. During the King County litigation, NWW served discovery on Plaintiff on October 18, 2021, and Plaintiff responded to this discovery on November 17, 2021. See **Exhibit T**, Proof of Service, dated November 17, 2021. Plaintiff also served numerous discovery requests on NWW, including:
 - Plaintiff's First Set of Interrogatories and Requests for Production Propounded to Defendant Northwest Wholesale, Inc., dated September 30, 2021.
 - Plaintiff's Second Set of Interrogatories Propounded to Defendant Northwest Wholesale, Inc., dated November 16, 2021.
 - Plaintiff's Third Set of Discovery Directed to Defendant Northwest Wholesale, Inc. (Plaintiff's Requests for Admission, Third Set of Interrogatories and Second Set of Requests for Production of Documents), dated May 22, 2024.
 - Plaintiff's Expert-Related Interrogatories and Requests for Production to Defendants Chevron U.S.A., Inc. and Northwest Wholesale, Inc., dated July 17, 2024.
 - Plaintiff's Contention Interrogatories to NWW, dated October 24, 2024.

1 See **Exhibit L**, Proofs of Service.

- 2 3. During the King County litigation, Plaintiff filed numerous discrete discovery-related
3 motions targeting NWW individually. Those motions include:
- 4 • Plaintiff's Motion to Compel NWW's Discovery Responses to Plaintiff's
5 Discovery Requests. See **Exhibit C**, Proof of Service, dated March 26, 2024.
 - 6 • Plaintiff's Motion to Strike Defendant NWW's Disclosure of Possible Primary
7 Witnesses. See **Exhibit D**, Proof of Service, dated April 26, 2024.
 - 8 • Plaintiff's Motion to Compel NWW's to Respond to and Supplement Discovery.
9 See **Exhibit E**, Proof of Service, dated July 18, 2024.
 - 10 • Plaintiff's Motion for Leave to Serve Additional Interrogatories Upon Defendant
11 NWW. See **Exhibit F**, Proof of Service, dated October 9, 2024.
- 12 4. On May 23, 2024, via email, Plaintiff noticed NWW's 30(b)(6) corporate representative for
13 a deposition. See **Exhibit G**, Email to Counsel for NWW, dated May 23, 2024. After being
14 postponed at the request of NWW's counsel, Plaintiff conducted this deposition on September
15 25, 2024. See **Exhibit H**, Dep. Tr. of NWW's 30(b)(6) Rodney Van Orman, dated September
16 25, 2024.
- 17 5. Plaintiff responded to numerous motions filed and/or joined by NWW during the litigation in
18 King County, including NWW's Motion for Summary Judgment on January 16, 2025. See
19 **Exhibit S**, Plaintiff's Response to NWW's Motion for Summary Judgment, dated January
20 16, 2025.
- 21 6. In anticipation of the court-ordered mediation, Plaintiff issued a demand in this case to NWW
22 on February 8, 2025. See **Exhibit I**, Demand Letter to NWW, dated February 8, 2025 (amount
23 of demand redacted). Three days after that demand letter was sent, on February 11, 2025,
NWW filed a Supplement to its Motion to Continue Trial Date ("Supplemental Motion for
Continuance"), arguing, essentially, that NWW's new counsel was unprepared to try this case
during the May 2025 setting because she had not been involved for the preceding 3.5 years.
See **Exhibit J**, NWW's Supplemental Motion for Continuance, dated February 11, 2025. No
other Defendants joined in the NWW Supplemental Motion for Continuance. Plaintiff filed a
response to this Supplemental Motion for Continuance on February 13, 2025.
7. Upon receipt of NWW's Supplemental Motion for Continuance and filing his response,
Plaintiff's counsel discussed with Mr. Smith the motion and the possible implications for the
May trial setting. Mr. Smith instructed his counsel that after waiting for almost 4 years for
his case to be heard, his ultimate desire was to maintain the May 2025 trial date. He expressed
his frustration with the case having been set multiple times and then continued repeatedly.
And he expressed his fear that it may happen again in response to this supplemental motion.
He reminded his counsel that since his case was filed one of his adult sons had died, his wife
and primary caretaker had died, and those facts, coupled with his declining health, required
him to now live in a long-term care group home. Mr. Smith, who is wheelchair bound, has
great difficulty communicating/speaking and is at risk of serious injury from falls, expressed
concern over his ability to attend or meaningfully participate in his trial if it was delayed

1 further. He authorized and instructed Plaintiff's counsel to re-engage with NWW in hopes of
 2 securing an expedited settlement if it would render the pending Supplemental Motion for
 3 Continuance moot. With this in mind, Plaintiff re-engaged with counsel for NWW
 4 concerning resolution. *See Exhibit K*, Email Communications with NWW's Counsel,
 5 beginning February 14, 2025. Eventually, Plaintiff's counsel had an opportunity to discuss
 6 the possibility of settlement with NWW's counsel on the telephone on February 17, 2025.
 During this call, Plaintiff expressed his client's position that he wanted to maintain the current
 trial date and avoid a situation where the trial could be delayed many months or even into
 2026. In light of this, Plaintiff was willing to move quickly. A few days later, on February
 20, 2025, NWW made an offer to resolve the case, and Plaintiff agreed to a proposed
 settlement in principal with NWW. *Id.* (settlement amount redacted).

- 7 8. Immediately after agreeing to the proposed settlement in principle, Plaintiff, with NWW's
 8 permission and copied, informed Judge Poydras' court staff of the settlement in principal and
 9 that NWW's Supplemental Motion for Continuance was moot. *See Exhibit M*, Email sent
 10 on behalf of Plaintiff and NWW to Judge Poydras, dated February 20, 2025. Following this
 11 communication, Judge Poydras' staff inadvertently informed the parties via email that the
 12 court was inclined to grant the Supplemental Motion for Continuance. *See Exhibit N*, Email
 13 from Mr. Alec Unis (Bailiff Covering for Judge Jason Poydras), dated February 20, 2025.
 14 Plaintiff's counsel immediately responded to that email with NWW's counsel copied seeking
 15 clarification and indicated that the recent settlement in principle, discussed in Plaintiff's
 16 counsel's previous email to Judge Poydras, rendered NWW's Supplemental Motion for
 17 Continuance moot. *See Exhibit O*, Email sent on behalf of Plaintiff and NWW to Judge
 18 Poydras, dated February 20, 2025. Upon receipt of this clarifying email, Judge Poydras'
 19 staff indicated to all the parties that its previous email suggesting NWW's Supplemental
 20 Motion for Continuance being granted was made in error and to disregard that email. *See*
 21 *Exhibit P*, Email from Mr. Alec Unis (Bailiff Covering for Judge Jason Poydras), dated
 22 February 20, 2025. Since that time, the parties had been operating as if the May 5, 2025 trial
 23 date was in place until the matter was removed on March 11, 2025.
9. On March 3, 2025, counsel for NWW emailed Plaintiff's counsel a proposed settlement
 agreement. *See Exhibit Q*, Email from NWW's Counsel to Plaintiff, dated March 3, 2025.
 That same day, Plaintiff's counsel responded and indicated that he would review the proposal
 and get back to NWW that week. *Id.* Two days later, on March 5, 2025, NWW's counsel
 emailed Plaintiff's counsel explaining that the previously sent proposed settlement agreement
 needed to be modified and that she would be sending an updated version "shortly." *See*
Exhibit R, Email from NWW's Counsel to Plaintiff, dated March 5, 2025.
10. As of this writing, Plaintiff has not received the promised amended/modified proposed
 agreement. As of this writing, no formal settlement agreement has been signed by Plaintiff.
 Plaintiff does not have an updated proposed agreement from NWW to review. NWW has not
 been dismissed from this case and will not be dismissed from this case until (1) a formal
 settlement agreement is executed and (2) conditions of said agreement are satisfied.
11. Defendants' Notice of Removal was filed 10 days before a long-standing hearing, that
 required significant preparation and coordination with the King County Superior Court, on

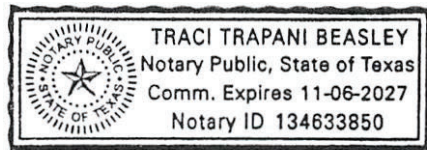
various motions to exclude experts and for summary judgment, among others, and three (3) days before the deposition of Defendants' late-disclosed (by agreement) expert witness in Miami, Florida.


12. Further affiant sayeth not.


CHARLES P. STERN

The foregoing Affidavit was subscribed and sworn to before me this 14th day of March, 2025.

[Seal]




Notary Public

My commission expires: 11-06-2027

EXHIBIT A

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DALE SMITH,

Plaintiff,

v.

CHEVRON U.S.A., INC.;
CHEVRON PHILLIPS CHEMICAL
COMPANY LP;
CHAMBERLIN DISTRIBUTING
COMPANY, INC. d/b/a CHAMBERLIN
AGRICULTURE;
NORTHWEST WHOLESALE, INC.;
SYNGENTA CROP PROTECTION, LLC;
and SYNGENTA AG;

Defendants.

NO.

COMPLAINT FOR PERSONAL
INJURIES

COMES NOW Plaintiff, Dale Smith, by and through his undersigned attorneys, and files this, Plaintiff's Complaint for Damages, against Defendants CHEVRON U.S.A., INC.; CHEVRON PHILLIPS CHEMICAL COMPANY LP; CHAMBERLIN DISTRIBUTING COMPANY, INC. d/b/a CHAMBERLIN AGRICULTURE; NORTHWEST WHOLESALE, INC.; SYNGENTA CROP PROTECTION, LLC; and SYNGENTA AG, and alleges the following:

1 registered agent, The Prentice-Hall Corporation System, Inc., 300 Deschutes Way SW, Ste 208, Mc-
2 CSC1, Tumwater, Washington 98501.

3 7. Defendant Chevron Phillips Chemical Company LP (“CP Chemical”) is a foreign
4 profit company with its principal place of business located in The Woodlands, Texas. It and/or its
5 predecessor-in-interest is a company who, at times relevant herein, sold, supplied, and/or distributed
6 defective and unreasonably dangerous paraquat products in Washington, where Plaintiff Dale Smith
7 worked with and/or around said products. Defendant CP Chemical may be served with process
8 through its registered agent, C T Corporation System, 711 Capitol Way S., Ste. 204, Olympia,
9 Washington 98501.

10 8. Chamberlin Distributing Company, Inc. d/b/a Chamberlin Agriculture
11 (“Chamberlin”) is a Washington company. It is a company who, at times relevant herein, sold,
12 supplied, and/or distributed defective and unreasonably dangerous paraquat products in Washington,
13 where Plaintiff Dale Smith worked with and/or around said products. Defendant Chamberlin
14 Agriculture may be served through its registered agent, Del Vanderhoff, 590 N. Chamberlin Way,
15 Ste. A, East Wenatchee, Washington 98802.

16 9. Northwest Wholesale Incorporated (“Northwest Wholesale”) is a Washington
17 company. It is a company who, at times relevant herein, sold, supplied, and/or distributed defective
18 and unreasonably dangerous paraquat products in Washington, where Plaintiff Dale Smith worked
19 with and/or around said products. Defendant Chamberlin Agriculture may be served through its
20 registered agent, Rodney Van Orman, 5416 Enterprise Dr., East Wenatchee, Washington 98802.

21 10. Syngenta Crop Protection, LLC (“SCPLLC”) is a foreign profit company with its
22 principal place of business located in Greensboro, North Carolina. It and/or its predecessor-in-interest
23 is a company who, at times relevant herein, sold, supplied, and/or distributed defective and

1 unreasonably dangerous paraquat products in Washington, where Plaintiff Dale Smith worked with
2 and/or around said products. Defendant Syngenta Crop Protection, LLC may be served with
3 process through its registered agent, C T Corporation System, 711 Capitol Way S, Ste. 204,
4 Olympia, Washington 98501.

5 11. Syngenta AG (“SAG”) is a foreign corporation with its principal place of business
6 in Basel, Switzerland.

7 **II. PERSONAL JURISDICTION & VENUE**

8 12. Plaintiff Dale Smith was exposed to paraquat-containing products in the state of
9 Washington as a result of specific tortious actions undertaken by Defendants. Defendants are
10 corporations or other business entities organized under the laws of the various states of the United
11 States, including the State of Washington, that were and/or are doing business in the State of
12 Washington and/or were participating in a concert-of-action that was or is located or conducted in
13 or through Washington and/or had effects in Washington, including, but not limited to, the
14 violation within the state of its laws and regulations.

15 13. The Court has general jurisdiction over Defendants Chamberlin and Northwest
16 Wholesale because they are both incorporated in Washington and have their principal places of
17 business in Washington.

18 14. The Court has specific jurisdiction over the remaining Defendants because they
19 each (1) purposefully performed acts or consummated transactions in Washington, including
20 business directly related to Plaintiff’s allegations herein; (2) Plaintiff’s cause of action arises out
21 of and/or relates to Defendants’ activities and/or transactions in Washington; and/or Defendants
22 committed a tortious act that caused or contributed Dale Smith’s exposure to paraquat in
23 Washington; (3) said activities or transactions were directed in whole or in part toward the state;

1 and (4) assumption of jurisdiction over such out-of-state defendants by this Court does not offend
2 traditional notions of fair play and substantial justice.

3 15. Furthermore, each Defendant: (A) (1) regularly does or solicits (and/or during the
4 relevant time period, did or solicited) business; (2) engages (and/or during the relevant time period
5 engaged) in one or more other persistent courses of conduct, including conduct related to Plaintiff's
6 allegations herein; and/or (3) derives (and/or during the relevant time period derived) substantial
7 revenue from goods used or consumed or services rendered in the state, including from products
8 and/or services at issue herein; and/or (B) expected or should reasonably have expected (and/or
9 during the relevant time period expected or should have reasonably expected) its acts to have
10 consequence in Washington and derives (and/or during the relevant time period derived)
11 substantial revenue from interstate or international commerce.

12 16. Venue is appropriate in King County pursuant to RCW 4.12.020 and 4.12.025
13 because certain Defendants reside in King County, Washington; currently transact business in
14 King County; and/or transacted business at the time the cause of action arose in King County. For
15 example, Defendants Chevron USA and/or CP Chemical currently own and/or operate dozens of
16 filling stations in King County.

17 III. FACTS

18 A. Defendants and Their Corporate Predecessors

19 1. Syngenta Entities

20 17. In 1926, four British chemical companies merged to create the British company
21 that then was known as Imperial Chemical Industries Ltd. and ultimately was known as Imperial
22 Chemical Industries PLC ("ICI"). In or about 1971, ICI created or acquired a wholly owned U.S.
23 subsidiary organized under the laws of the State of Delaware, which at various times was known

1 as Atlas Chemical Industries Inc., ICI North America Inc., ICI America Inc., and ICI United States
2 Inc., and ultimately was known as ICI Americas Inc. (collectively, “ICI Americas”). In or about
3 1992, ICI merged its pharmaceuticals, agrochemicals, and specialty chemicals businesses,
4 including the agrochemicals business it had operated at one time through a wholly owned British
5 subsidiary known as Plant Protection Ltd. and later as a division within ICI, into a wholly owned
6 British subsidiary known as ICI Bioscience Ltd. In 1993, ICI demerged its pharmaceuticals,
7 agrochemicals, and specialty chemicals businesses, from which it created the Zeneca Group, with
8 the British company Zeneca Group PLC as its ultimate parent company.

9 18. As a result of ICI’s demerger and creation of the Zeneca Group, ICI Bioscience
10 Ltd. was demerged from ICI and merged into, renamed, or continued its business under the same
11 or similar ownership and management as Zeneca Ltd., a wholly owned British subsidiary of
12 Zeneca Group PLC. Before ICI’s demerger and creation of the Zeneca Group, ICI had a Central
13 Toxicology Laboratory that performed and hired others to perform health and safety studies that
14 were submitted to the U.S. Department of Agriculture (“USDA”) and the U.S. Environmental
15 Protection Agency (“EPA”) to secure and maintain the registration of paraquat and other pesticides
16 for use in the United States.

17 19. As a result of ICI’s demerger and creation of the Zeneca Group, ICI’s Central
18 Toxicology Laboratory became Zeneca Ltd.’s Central Toxicology Laboratory. After ICI’s
19 demerger and creation of the Zeneca Group, Zeneca Ltd.’s Central Toxicology Laboratory
20 continued to perform and hire others to perform health and safety studies that were submitted to
21 EPA to secure and maintain the registration of paraquat and other pesticides for use in the United
22 States. As a result of ICI’s demerger and creation of the Zeneca Group, ICI Americas was
23 demerged from ICI and merged into, renamed, or continued its business under the same or similar

1 ownership and management as Zeneca, Inc. (“Zeneca”), a wholly owned subsidiary of Zeneca
2 Group PLC organized under the laws of the State of Delaware.

3 20. In 1996, the Swiss pharmaceutical and chemical companies Ciba-Geigy Ltd. and
4 Sandoz AG merged to create the Novartis Group, with the Swiss company Novartis AG as the
5 ultimate parent company. As a result of the merger that created the Novartis Group, Ciba-Geigy
6 Corporation, a wholly owned subsidiary of Ciba-Geigy Ltd. organized under the laws of the State
7 of New York, was merged into, or continued its business under the same or similar ownership and
8 management as Novartis Crop Protection, Inc. (“NCPI”), a wholly owned subsidiary of Novartis
9 AG organized under the laws of the State of Delaware.

10 21. In 1999, the Swedish pharmaceutical company Astra AB merged with Zeneca
11 Group PLC to create the British company AstraZeneca PLC, of which Zeneca Ltd. and Zeneca
12 were wholly owned subsidiaries. In 2000, Novartis AG and AstraZeneca PLC spun off and merged
13 the Novartis Group’s crop protection and seeds businesses and AstraZeneca’s agrochemicals
14 business to create the Syngenta Group, a global group of companies focused solely on
15 agribusiness, with Defendant SAG as the ultimate parent company.

16 22. As a result of the Novartis/AstraZeneca spinoff and merger that created the
17 Syngenta Group, Zeneca Ltd. was merged into, renamed, or continued its business under the same
18 or similar ownership and management as Syngenta Ltd., a wholly owned British subsidiary of
19 SAG; and Zeneca Ltd.’s Central Toxicology Laboratory became Syngenta Ltd.’s Central
20 Toxicology Laboratory. Since the Novartis/AstraZeneca spinoff and merger that created the
21 Syngenta Group, Syngenta Ltd.’s Central Toxicology Laboratory has continued to perform and
22 hire others to perform health and safety studies for submission to the EPA to secure and maintain
23 the registration of paraquat and other pesticides for use in the United States.

23. As a result of the Novartis/AstraZeneca spinoff and merger that created the Syngenta Group, NCPI and Zeneca were merged into and renamed, or continued to do their business under the same or similar ownership and management, as Syngenta Crop Protection, Inc. ("SCPI"), a wholly owned subsidiary of SAG organized under the laws of the State of Delaware. In 2010, SCPI was converted into Defendant SCPLLC, a wholly owned subsidiary of SAG organized and existing under the laws of the State of Delaware with its principal place of business in Greensboro, North Carolina.

24. As a result of these various transactions, discussed *supra*:

- SAG is a successor by merger or continuation of business to its corporate predecessor Novartis AG;
- SAG is a successor by merger or continuation of business to its corporate predecessor AstraZeneca PLC;
- SAG is a successor by merger or continuation of business to its corporate predecessor Zeneca Group PLC;
- SAG is a successor by merger or continuation of business to its corporate predecessor Imperial Chemical Industries PLC, previously known as Imperial Chemical Industries Ltd.;
- SAG is a successor by merger or continuation of business to its corporate predecessor ICI Bioscience Ltd.; and
- SAG is a successor by merger or continuation of business to its corporate predecessor Plant Protection Ltd.

25. Additionally, as a result of these various transactions, discussed *supra*:

- SCPLLC is a successor by merger or continuation of business to its corporate predecessor SCPI;
- SCPLLC is a successor by merger or continuation of business to its corporate predecessor NCPI;
- SCPLLC is a successor by merger or continuation of business to its corporate predecessor Ciba-Geigy Corporation;

- SCPLLC is a successor by merger or continuation of business to its corporate predecessor Zeneca Inc.; and
- SCPLLC is a successor by merger or continuation of business to its corporate predecessor ICI Americas Inc., previously known as Atlas Chemical Industries Inc., ICI North America Inc., ICI America Inc., and ICI United States Inc.

26. SCPLLC is registered to do business in the State of Washington, and SCPLLC does substantial business in the State of Washington, including the following:

- a. markets, advertises, distributes, sells, and delivers paraquat and other pesticides to distributors, dealers, applicators, and farmers in the State of Washington;
- b. secures and maintains the registration of paraquat and other pesticides with the EPA and the Washington Department of Agriculture to enable itself and others to manufacture, distribute, sell, and use these products in the State of Washington; and
- c. performs, hires others to perform, and funds or otherwise sponsors or otherwise funds the testing of pesticides in the State of Washington.

27. SAG is a foreign corporation organized and existing under the laws of Switzerland, with its principal place of business in Basel, Switzerland. SAG is a holding company that owns stock or other ownership interests, either directly or indirectly, in other Syngenta Group companies, including SCPLLC. SAG is a management holding company.

28. Syngenta Crop Protection AG (“SCPAG”), a Swiss corporation with its principal place of business in Basel, Switzerland, is one of SAG’s direct, wholly owned subsidiaries. SCPAG employs the global operational managers of production, distribution, and marketing for the Syngenta Group’s Crop Protection (“CP”) and Seeds Divisions. The Syngenta Group’s CP and Seeds Divisions are the business units through which SAG manages its CP and Seeds product lines. The Syngenta Group’s CP and Seeds Divisions are not and have never been corporations or other legal entities.

29. SCPAG directly and wholly owns Syngenta International AG (“SIAG”). SIAG is the “nerve center” through which SAG manages the entire Syngenta Group. SIAG employs the

1 “Heads” of the Syngenta Group’s CP and Seeds Divisions. SIAG also employs the “Heads” and
2 senior staff of various global functions of the Syngenta Group, including Human Resources,
3 Corporate Affairs, Global Operations, Research and Development, Legal and Taxes, and Finance.
4 Virtually all of the Syngenta Group’s global “Heads” and their senior staff are housed in the same
5 office space in Basel, Switzerland.

6 30. SAG is the indirect parent of SCPLLC through multiple layers of corporate
7 ownership:

- 8 a. SAG directly and wholly owns Syngenta Participations AG;
- 9 b. Syngenta Participations AG directly and wholly owns Seeds JV C.V.;
- 10 c. Seeds JV C.V. directly and wholly owns Syngenta Corporation;
- 11 d. Syngenta Corporation directly and wholly owns Syngenta Seeds, LLC; and
- 12 e. Syngenta Seeds, LLC directly and wholly owns SCPLLC.

13 31. Before SCPI was converted to SCPLLC, it was incorporated in Delaware, had its
14 principal place of business in North Carolina, and had its own board of directors. SCPI’s sales
15 accounted for more than 47% of the sales for the entire Syngenta Group in 2019.

16 32. SAG has purposefully organized the Syngenta Group, including SCPLLC, in such
17 a way as to attempt to evade the authority of courts in jurisdictions in which it does substantial
18 business. Although the formal legal structure of the Syngenta Group is designed to suggest
19 otherwise, SAG in fact exercises an unusually high degree of control over its country-specific
20 business units, including SCPLLC, through a “matrix management” system of functional
21 reporting to global “Product Heads” in charge of the Syngenta Group’s unincorporated Crop
22 Protection and Seeds Divisions, and to global “Functional Heads” in charge of human resources,
23 corporate affairs, global operations, research and development, legal and taxes, and finance.

1 33. The lines of authority and control within the Syngenta Group do not follow its
2 formal legal structure, but instead follow this global “functional” management structure. SAG
3 controls the actions of its far-flung subsidiaries, including SCPLLC, through this global
4 “functional” management structure. SAG’s board of directors has established a Syngenta
5 Executive Committee (“SEC”), which is responsible for the active leadership and the operative
6 management of the Syngenta Group, including SPLLC. The SEC consists of the CEO and various
7 global Heads, which currently are:

- 8 a. The Chief Executive Officer;
- 9 b. Group General Counsel;
- 10 c. The President of Global Crop Protection;
- 11 d. The Chief Financial Officer;
- 12 e. The President of Global Seeds; and
- 13 f. The Head of Human Resources;

14 34. SIAG employs all of the members of the Executive Committee.

15 35. Global Syngenta Group corporate policies require SAG subsidiaries, including
16 SPLLC, to operate under the direction and control of the SEC and other unincorporated global
17 management teams. SAG’s board of directors meets five to six times a year. In contrast, SCPI’s
18 board of directors rarely met, either in person or by telephone, and met only a handful of times
19 over the last decade before SCPI became SCPLLC.

20 36. Most, if not all, of the SCPI board’s formal actions, including selecting and
21 removing SCPI officers, were taken by unanimous written consent pursuant to directions from the
22 SEC or other Syngenta Group global or regional managers that were delivered via e-mail to SCPI
23 board members. Since SCPI became SCPLLC, decisions that are nominally made by the board or

1 managers of SCPLLC in fact continue to be directed by the SEC or other Syngenta Group global
2 or regional managers. Similarly, Syngenta Seeds, Inc.'s board of directors appointed and removed
3 SCPI board members at the direction of the SEC or other Syngenta Group global or regional
4 managers. Since SCPI became SCPLLC, the appointment and removal of the manager(s) of
5 SCPLLC continues to be directed by the SEC or other Syngenta Group global or regional
6 managers.

7 37. The management structure of the Syngenta Group's CP Division, of which
8 SCPLLC is a part, is not defined by legal, corporate relationships, but by functional reporting
9 relationships that disregard corporate boundaries. Atop the CP Division is the CP Leadership
10 Team (or another body with a different name but substantially the same composition and
11 functions), which includes the President of Global Crop Protection, the CP region Heads (including
12 SCPLLC President Vern Hawkins), and various global corporate function Heads. The CP
13 Leadership Team meets bi-monthly to develop strategy for new products, markets, and operational
14 efficiencies and to monitor performance of the Syngenta Group's worldwide CP business.

15 38. Under the CP Leadership Team are regional leadership teams, including the North
16 America Regional Leadership Team (or another body with a different name but substantially the
17 same composition and functions), which oversees the Syngenta Group's U.S. and Canadian CP
18 business (and, when previously known as the NAFTA Regional Leadership Team, also oversaw
19 the Syngenta Group's Mexican CP business). The North America Regional Leadership Team is
20 chaired by SCPLLC's president and includes employees of SCPLLC and the Syngenta Group's
21 Canadian CP company (and when previously known as the NAFTA Regional Leadership Team,
22 also included employees of the Syngenta Group's Mexican CP company).

23 39. The Syngenta Group's U.S. and Canadian CP companies, including SCPLLC,

1 report to the North America Regional Leadership Team, which reports to the CP Leadership Team,
2 which reports to the SEC, which reports to SAG's board of directors. Some members of the North
3 America Regional Leadership Team, including some SCPLLC employees, report or have in the
4 past reported not to their nominal superiors within the companies that employ them, but directly
5 to the Syngenta Group's global Heads. Syngenta Group global Heads that supervise SCPLLC
6 employees participate and have in the past participated in the performance reviews of these
7 employees and in setting their compensation.

8 40. The Syngenta Group's functional reporting lines have resulted in employees of
9 companies, including SCPLLC, reporting to officers of remote parent companies, officers of
10 affiliates with no corporate relationship other than through SAG, or officers of subsidiary
11 companies. SCPLLC performs its functions according to its role in the CP Division structure:

- 12 a. CP Division development projects are proposed at the global level, ranked, and
13 funded at the global level after input from functional entities such as the CP
14 Leadership Team and the North America Regional Leadership Team, and given
15 final approval by the SEC;
- 16 b. New CP products are developed by certain Syngenta Group companies or
17 functional groups that manage and conduct research and development functions for
18 the entire CP Division;
- 19 c. These products are then tested by other Syngenta Group companies, including
20 SCPLLC, under the direction and supervision of the SEC, the CP Leadership Team,
21 or other Syngenta Group global managers;
- 22 d. Syngenta Group companies, including SCPLLC, do not contract with or
23 compensate each other for this testing;
- e. Rather, the cost of such testing is included in the testing companies' operating
budgets, which are established and approved by the Syngenta Group's global
product development managers and the SEC;
- f. If a product shows promise based on this testing and the potential markets for the
product, either global or regional leaders (depending on whether the target market
is global or regional), not individual Syngenta Group companies such as SCPLLC,
decide whether to sell the product;

- g. Decisions to sell the product must be approved by the SEC; and
- h. The products that are sold all bear the same Syngenta trademark and logo.

41. SCPLLC is subject to additional oversight and control by Syngenta Group global managers through a system of “reserved powers” established by SAG and applicable to all Syngenta Group companies. These “reserved powers” require Syngenta Group companies to seek approval for certain decisions from higher levels within the Syngenta Group’s functional reporting structure. For example, although SAG permits Syngenta Group companies to handle small legal matters on their own, under the “reserved powers” system, SAG’s Board of Directors must approve settlements of certain types of lawsuits against Syngenta Group companies, including SCPLLC, if their value exceeds an amount specified in the “reserved powers.”

42. Similarly, the appointments of senior managers at SCPLLC must be approved by higher levels than SCPLLC’s own management, board of directors, or even its direct legal owner. Although SCPLLC takes the formal action necessary to appoint its own senior managers, this formal action is in fact merely the rubber-stamping of decisions that have already been made by the Syngenta Group’s global management.

43. Although SAG subsidiaries, including SCPLLC, pay lip service to legal formalities that give the appearance of authority to act independently, in practice many of their acts are directed or pre-approved by the Syngenta Group’s global management. SAG and the global management of the Syngenta Group restrict the authority of SCPLLC to act independently in areas including:

- a. Product development;
- b. Product testing (among other things, SAG and the global management of the Syngenta Group require SCPLLC to use Syngenta Ltd.’s Central Toxicology

1 Laboratory to design, perform, or oversee product safety testing that SCPLLC
2 submits to the EPA in support of the registrations of paraquat and other pesticides);

- 3 c. Production;
- 4 d. Marketing;
- 5 e. Sales;
- 6 f. Human resources;
- 7 g. Communications and public affairs;
- 8 h. Corporate structure and ownership
- 9 i. Asset sales and acquisitions
- 10 j. Key appointments to boards, committees, and management positions;
- 11 k. Compensation packages;
- 12 l. Training for high-level positions; and
- 13 m. Finance (including day-to-day cash management) and tax.

14 44. Under the Syngenta Group's functional management system, global managers
15 initiate, and the global Head of Human Resources oversees international assignments and
16 compensation of managers employed by one Syngenta subsidiary to do temporary work for another
17 Syngenta subsidiary in another country. This international assignment program aims, in part, to
18 improve Syngenta Group-wide succession planning by developing corporate talent to make
19 employees fit for higher positions within the global Syngenta Group of companies. Under this
20 international assignment program, at the instance of Syngenta Group global managers, SCPLLC
21 officers and employees have been "seconded" to work at other SAG subsidiaries, and officers and
22 employees of other Syngenta Group subsidiaries have been "seconded" to work at SCPLLC.

23 45. The Syngenta Group's functional management system includes a central global
finance function—known as Syngenta Group Treasury—for the entire Syngenta Group. The

1 finances of all Syngenta Group companies are governed by a global treasury policy that
2 subordinates the financial interests of SAG's subsidiaries, including SCPLLC, to the interests of
3 the Syngenta Group as a whole. Under the Syngenta Group's global treasury policy, Syngenta
4 Group Treasury controls daily cash sweeps from subsidiaries such as SCPLLC, holds the cash on
5 account, and lends it to other subsidiaries that need liquidity. The Syngenta Group's global
6 treasury policy does not allow SAG subsidiaries such as SCPLLC to seek or obtain financing from
7 non-Syngenta entities without the approval of Syngenta Group Treasury. Syngenta Group
8 Treasury also decides whether SCPLLC will issue a dividend or distribution to its direct parent
9 company, and how much that dividend will be. SCPLLC's board or management approves
10 dividends and distributions mandated by Syngenta Group Treasury without any meaningful
11 deliberation.

12 46. In 2011, a federal District Court held that SAG's unusually high degree of control
13 over SCPLLC made SCPLLC the agent or alter ego of SAG and therefore subjected SAG to
14 jurisdiction in the State of Illinois. *See City of Greenville, Ill. v. Syngenta Crop Protection, Inc.*,
15 830 F. Supp. 2d 550 (S.D. Ill. 2011). SAG continues to exercise the unusually high degree of
16 control over SCPLLC. SAG, through its agent or alter ego, SCPLLC, does substantial business in
17 the State of Washington, in the ways previously alleged as to SCPLLC.

18 2. Chevron Entities

19 47. Chevron Chemical Company ("Chevron Chemical") was a corporation organized
20 in 1928 under the laws of the State of Delaware. In 1997, Chevron Chemical was merged into
21 Chevron Chemical Company LLC ("Chevron Chemical LLC"), a limited liability company
22 organized under the laws of the State of Delaware. In the mid-2000s, Chevron Chemical LLC was
23 merged into or continued to operate under the same or similar ownership and management as

1 Defendant CP Chemical, a limited partnership organized and existing under the laws of the State
2 of Delaware with its principal place of business in The Woodlands, Texas.

3 48. As a result of these various transactions, discussed *supra*: CP Chemical is a
4 successor by merger or continuation of business to its corporate predecessor Chevron Chemical
5 LLC; and CP Chemical is a successor by merger or continuation of business to its corporate
6 predecessor Chevron Chemical.

7 49. CP Chemical is registered to do business in the State of Washington, and does
8 substantial business in the State of Washington, including King County; among other things, it
9 owns and/or operates numerous filling stations in King County.

10 50. Defendant Chevron USA is a corporation organized and existing under the laws of
11 the State of Pennsylvania, with its principal place of business in the State of California. Chevron
12 USA is registered to do business in Washington. In the mid-2000s, Chevron USA entered into an
13 agreement in which it expressly assumed the liabilities of Chevron Chemical and Chevron
14 Chemical LLC arising from Chevron Chemical's then-discontinued agrichemical business, which
15 included the design, registration, manufacture, formulation, packaging, labeling, distribution,
16 marketing, and sale of paraquat products in the United States as alleged in this Complaint.

17 **3. Chamberlin**

18 51. Defendant Chamberlin is a Washington company. During the relevant time period,
19 Chamberlin maintained a retail location in or around Oroville, Washington, where it sold and/or
20 mixed, *inter alia*, paraquat-containing herbicides.

21 **4. Northwest Wholesale**

22 52. Defendant Northwest Wholesale is a Washington company. Defendant Northwest
23 Wholesale is a Washington company. During the relevant time period, Northwest Wholesale

1 maintained a retail location in or around Oroville, Washington, where it sold and/or mixed, *inter*
2 *alia*, paraquat-containing herbicides.

3 **B. Paraquat Manufacture, Distribution, and Sale**

4 53. ICI, a legacy company of Syngenta, claims to have discovered the herbicidal
5 properties of paraquat in 1955. The leading manufacturer of paraquat is Syngenta, which (as ICI)
6 developed the active ingredient in paraquat in the early 1960s.

7 54. ICI produced the first commercial paraquat formulation and registered it in England
8 in 1962. Paraquat was first marketed in 1962 under the brand name Gramoxone. Paraquat first
9 became commercially available for use in the United States in 1964.

10 55. In or about 1964, ICI and Chevron Chemical entered into agreements regarding the
11 licensing and distribution of paraquat (“the ICI-Chevron Chemical Agreements”). In or about
12 1971, ICI Americas became a party to the ICI-Chevron Chemical Agreements on the same terms
13 as ICI. The ICI-Chevron Chemical Agreements were renewed or otherwise remained in effect
14 until about 1986.

15 56. In the ICI-Chevron Chemical Agreements:

- 16 • ICI and ICI Americas granted Chevron Chemical a license to their patents and
17 technical information to permit Chevron Chemical to formulate or have formulated,
18 use, and sell paraquat in the United States and to grant sub-licenses to others to do
19 so;
- 20 • Chevron Chemical granted ICI and ICI Americas a license to its patents and
21 technical information to permit ICI and ICI Americas to formulate or have
22 formulated, use, and sell paraquat throughout the world and to grant sub-licenses
23 to others to do so;
- ICI and ICI Americas and Chevron Chemical agreed to exchange patent and
technical information regarding paraquat;
- ICI and ICI Americas granted Chevron Chemical exclusive rights to distribute and
sell paraquat in the United States; and

- ICI and ICI Americas granted Chevron Chemical a license to distribute and sell paraquat in the U.S. under the ICI-trademarked brand name Gramoxone.

57. ICI and ICI Americas and Chevron Chemical entered into the ICI-Chevron Chemical Agreements to divide the worldwide market for paraquat between them. Under the ICI-Chevron Chemical Agreements and related agreements:

- Chevron Chemical distributed and sold paraquat in the U.S. and ICI and ICI Americas distributed and sold paraquat outside the United States.
- Both ICI and ICI Americas and Chevron Chemical distributed and sold paraquat under the ICI-trademarked brand name Gramoxone.
- ICI and ICI Americas and Chevron Chemical exchanged patent and technical information regarding paraquat.
- ICI and ICI Americas provided to Chevron Chemical health and safety and efficacy studies performed or procured by ICI's Central Toxicology Laboratory, which Chevron Chemical then submitted to the USDA and the EPA to secure and maintain the registration of paraquat for manufacture, formulation, distribution, and sale for use in the United States.
- ICI and ICI Americas manufactured and sold paraquat to Chevron Chemical that Chevron Chemical then distributed and sold in the United States, including in Washington, where Chevron Chemical registered paraquat products and marketed, advertised, and promoted them to Washington distributors, dealers, applicators, and farmers.
- Chevron Chemical distributed and sold paraquat in the United States under the ICI-trademarked brand name Gramoxone and other names, including in Washington, where Chevron Chemical registered such products and marketed, advertised, and promoted them to Washington distributors, dealers, applicators, and farmers.

58. SAG and its corporate predecessors and others with whom they acted in concert have manufactured, formulated, distributed, and sold paraquat for use in the United States from about 1964 through the present, and at all relevant times intended or expected their paraquat products to be distributed and sold in Washington, where they registered such products, and marketed, advertised, and promoted them to Washington distributors, dealers, applicators, and farmers.

1 59. SAG and its corporate predecessors and others with whom they acted in concert
2 have submitted health and safety and efficacy studies to the USDA and the EPA to support the
3 registration of paraquat for manufacture, formulation, distribution, and sale for use in the United
4 States from approximately 1964 through the present.

5 60. SCPLLC and its corporate predecessors and others with whom they acted in concert
6 have manufactured, formulated, distributed, and sold paraquat for use in the United States from
7 about 1971 through the present, and at all relevant times intended or expected their paraquat
8 products to be distributed and sold in Washington, where they registered such products, and
9 marketed, advertised, and promoted them to Washington distributors, dealers, applicators, and
10 farmers.

11 61. SCPLLC and its corporate predecessors and others with whom they acted in concert
12 have submitted health and safety and efficacy studies to the EPA to support the registration of
13 paraquat for manufacture, formulation, distribution, and sale for use in the U.S. from about 1971
14 through the present.

15 62. Chevron Chemical manufactured, formulated, distributed, and sold paraquat for use
16 in the United States from about 1964 through at least 1986, acting in concert with ICI and ICI
17 Americas throughout this period, including in Washington, where Chevron Chemical registered
18 such products, and used in Washington, and marketed, advertised, and promoted them to
19 Washington distributors, dealers, applicators, and farmers.

20 **C. Paraquat Usage**

21 63. Since 1964, paraquat has been used in the U.S. to kill broadleaf weeds and grasses
22 before the planting or emergence of more than 100 field, fruit, vegetable, and plantation crops; to
23 control weeds in orchards; and to desiccate (dry) plants before harvest. At all relevant times, where

1 paraquat was used, it was commonly used multiple times per year on the same land, particularly
2 when used to control weeds in orchards or on farms with multiple crops planted on the same land
3 within a single growing season or year, and such use was as intended or directed or reasonably
4 foreseeable.

5 64. At all relevant times, paraquat manufactured, distributed, sold, and sprayed or
6 caused to be sprayed by Defendants, Defendants' corporate predecessors, and others with whom
7 they acted in concert, was typically sold to end-users in the form of liquid concentrates (and less
8 commonly in the form of granular solids) designed to be diluted with water before or after loading
9 it into the tank of a sprayer and applied by spraying it onto target weeds.

10 65. At all relevant times, concentrates containing paraquat manufactured, distributed,
11 sold, and sprayed or caused to be sprayed by Defendants, Defendants' corporate predecessors, and
12 others with whom they acted in concert typically were formulated with one or more "surfactants"
13 to increase the ability of the herbicide to stay in contact with the leaf, penetrate the leaf's waxy
14 surface, and enter into plant cells, and the accompanying instructions typically told end-users to
15 add a surfactant or crop oil (which as typically formulated contains a surfactant) before use.

16 66. At all relevant times, paraquat typically was applied with a knapsack sprayer, hand-
17 held sprayer, aircraft (i.e., crop duster), truck with attached pressurized tank, or tractor-drawn
18 pressurized tank, and such use was as intended or directed or was reasonably foreseeable.

19 **D. Paraquat Exposure**

20 67. At all relevant times, it was reasonably foreseeable that when paraquat was used in
21 the manner intended or directed or in a reasonably foreseeable manner, users of paraquat and
22 persons nearby would be exposed to paraquat while it was being mixed and loaded into the tanks
23 of sprayers, including as a result of spills, splashes, and leaks.

1 68. At all relevant times, it was reasonably foreseeable that when paraquat was used in
2 the manner intended or directed or in a reasonably foreseeable manner, persons who sprayed
3 paraquat or were in or near areas where it was being or recently had been sprayed would be exposed
4 to paraquat, including as a result of spray drift, the movement of herbicide spray droplets from the
5 target area to an area where herbicide application was not intended, typically by wind, and as a
6 result of contact with sprayed plants.

7 69. At all relevant times, it was reasonably foreseeable that when paraquat was used in
8 the manner intended or directed or in a reasonably foreseeable manner, users of paraquat and
9 persons nearby would be exposed to paraquat, including as a result of spills, splashes, and leaks,
10 while equipment used to spray it was being emptied or cleaned or clogged spray nozzles, lines, or
11 valves were being cleared.

12 70. At all relevant times, it was reasonably foreseeable that paraquat could enter the
13 human body via absorption through or penetration of the skin, mucous membranes, and other
14 epithelial tissues, including tissues of the mouth, nose and nasal passages, trachea, and conducting
15 airways, particularly where cuts, abrasions, rashes, sores, or other tissue damage was present.

16 71. At all relevant times, it was reasonably foreseeable that paraquat could enter the
17 human body via respiration into the lungs, including the deep parts of the lungs where respiration
18 (gas exchange) occurred.

19 72. At all relevant times, it was reasonably foreseeable that paraquat could enter the
20 human body via ingestion into the digestive tract of small droplets swallowed after entering the
21 mouth, nose, or conducting airways.
22
23

73. At all relevant times, it was reasonably foreseeable that paraquat that entered the human body via ingestion into the digestive tract could enter the enteric nervous system (the part of the nervous system that governs the function of the gastrointestinal tract).

74. At all relevant times, it was reasonably foreseeable that paraquat that entered the human body, whether via absorption, respiration, or ingestion, could enter the bloodstream.

75. At all relevant times, it was reasonably foreseeable that paraquat that entered the bloodstream could enter the brain, whether through the blood-brain barrier or parts of the brain not protected by the blood-brain barrier.

76. At all relevant times, it was reasonably foreseeable that paraquat that entered the nose and nasal passages could enter the brain through the olfactory bulb (a part of the brain involved in the sense of smell), which is not protected by the blood-brain barrier.

E. Parkinson's Disease

77. PD is progressive neurodegenerative disorder of the brain that affects primarily the motor system, the part of the central nervous system that controls movement. Scientists who study PD generally agree that fewer than 10% of all PD cases are caused by inherited genetic mutations alone, and that more than 90% are caused by a combination of environmental factors, genetic susceptibility, and the aging process.

1. Symptoms and treatment

78. The characteristic symptoms of PD are its “primary” motor symptoms: resting tremor (shaking movement when the muscles are relaxed), bradykinesia (slowness in voluntary movement and reflexes), rigidity (stiffness and resistance to passive movement), and postural instability (impaired balance). PD’s primary motor symptoms often result in “secondary” motor symptoms such as freezing of gait; shrinking handwriting; mask-like expression; slurred,

1 monotonous, quiet voice; stooped posture; muscle spasms; impaired coordination; difficulty
2 swallowing; and excess saliva and drooling caused by reduced swallowing movements.

3 79. Non-motor symptoms-such as loss of or altered sense of smell; constipation; low
4 blood pressure on rising to stand; sleep disturbances; and depression-are present in most cases of
5 PD, often for years before any of the primary motor symptoms appear.

6 80. There is currently no cure for PD. No treatment will slow, stop, or reverse its
7 progression, and the treatments most-commonly prescribed for its motor symptoms tend to become
8 progressively less effective, and to cause unwelcome side effects, the longer they are used.

9 **2. Pathophysiology**

10 81. The selective degeneration and death of dopaminergic neurons (dopamine-
11 producing nerve cells) in a part of the brain called the substantia nigra pars compacta (“SNpc”) is
12 one of the primary pathophysiological hallmarks of PD. Dopamine is a neurotransmitter (a
13 chemical messenger that transmits signals from one neuron to another neuron, muscle cell, or gland
14 cell) that is critical to the brain’s control of motor function (among other things). The death of
15 dopaminergic neurons in the SNpc decreases the production of dopamine.

16 82. Once dopaminergic neurons die, they are not replaced; when enough dopaminergic
17 neurons have died, dopamine production falls below the level the brain requires for proper control
18 of motor function, resulting in the motor symptoms of PD. The presence of Lewy bodies (insoluble
19 aggregates of a protein called alpha-synuclein) in many of the remaining dopaminergic neurons in
20 the SNpc is another of the primary pathophysiological hallmarks of PD. Dopaminergic neurons
21 are particularly susceptible to oxidative stress, a disturbance in the normal balance between
22 oxidants present in cells and cells’ antioxidant defenses. Scientists who study PD generally agree
23 that oxidative stress is a major factor in—if not the precipitating cause of—the degeneration and

1 death of dopaminergic neurons in the SNpc and the accumulation of Lewy bodies in the remaining
2 dopaminergic neurons that are the primary pathophysiological hallmarks of PD.

3 **F. Paraquat's Toxicity**

4 83. Paraquat is highly toxic to both plants and animals. Paraquat injures and kills plants
5 by creating oxidative stress that causes or contributes to cause the degeneration and death of plant
6 cells. Paraquat injures and kills humans and other animals by creating oxidative stress that causes
7 or contributes to cause the degeneration and death of animal cells. Paraquat creates oxidative
8 stress in the cells of plants and animals because of “redox properties” that are inherent in its
9 chemical composition and structure: it is a strong oxidant, and it readily undergoes “redox cycling”
10 in the presence of molecular oxygen, which is plentiful in living cells.

11 84. The redox cycling of paraquat in living cells interferes with cellular functions that
12 are necessary to sustain life—photosynthesis in the case of plant cells and cellular respiration in
13 the case of animal cells. The redox cycling of paraquat in living cells creates a “reactive oxygen
14 species” known as superoxide radical, an extremely reactive molecule that can initiate a cascading
15 series of chemical reactions that creates other reactive oxygen species that damage lipids, proteins,
16 and nucleic acids—molecules that are essential components of the structures and functions of
17 living cells. Because the redox cycling of paraquat can repeat indefinitely in the conditions
18 typically present in living cells, a single molecule of paraquat can trigger the production of
19 countless molecules of destructive superoxide radical. Significantly, Paraquat's redox properties
20 have been known since at least the 1930s.

21 85. That paraquat is toxic to the cells of plants and animals because it creates oxidative
22 stress through redox cycling has been known since at least the 1960s. The surfactants with which
23 the concentrates containing paraquat manufactured, distributed, and sold by Defendants,

1 Defendants' corporate predecessors, and others with whom they acted in concert typically were
2 formulated were likely to increase paraquat's toxicity to humans by increasing its ability to stay in
3 contact with or penetrate the skin, mucous membranes, and other epithelial tissues, including
4 tissues of the mouth, nose and nasal passages, trachea, and conducting airways, the lungs, and the
5 gastrointestinal tract.

6 **G. Paraquat and Parkinson's Disease**

7 86. The same redox properties that make paraquat toxic to plant cells and other types
8 of animal cells make it toxic to dopaminergic neurons—paraquat is a strong oxidant that interferes
9 with the function of, damages, and ultimately kills dopaminergic neurons by creating oxidative
10 stress through redox cycling. Although PD is not known to occur naturally in any species other
11 than humans, PD research is often performed using “animal models,” in which scientists artificially
12 produce in laboratory animals, conditions that show features of PD. Paraquat is one of only a
13 handful of toxins that scientists use to produce animal models of PD.

14 87. In animal models of PD, hundreds of studies involving various routes of exposure
15 have found that paraquat creates oxidative stress that results in the degeneration and death of
16 dopaminergic neurons in the SNpc, other pathophysiology consistent with that seen in human PD,
17 and motor deficits and behavioral changes consistent with those commonly seen in human PD.
18 Hundreds of in vitro studies have found that paraquat creates oxidative stress that results in the
19 degeneration and death of dopaminergic neurons (and many other types of animal cells).
20 Additionally, many epidemiological studies (studies of the patterns and causes of disease in
21 defined populations) have found an association between paraquat exposure and PD, including
22 multiple studies finding a two- to five-fold or greater increase in the risk of PD in populations with
23 occupational exposure to paraquat compared to populations without such exposure.

1 **H. Paraquat Regulation**

2 88. The Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. §
 3 136 et seq., which regulates the distribution, sale, and use of pesticides within the United States,
 4 requires that pesticides be registered with the EPA prior to their distribution, sale, or use, except
 5 as described by FIFRA. 7 U.S.C. 136a(a). As part of the pesticide registration process, the EPA
 6 requires, among other things, a variety of tests to evaluate the potential for exposure to pesticides,
 7 toxicity to people and other potential non-target organisms, and other adverse effects on the
 8 environment.

9 89. As a general rule, FIFRA requires registrants to perform health and safety testing
 10 of pesticides. FIFRA does not, however, require the EPA to perform health and safety testing of
 11 pesticides itself, and the EPA generally does not perform such testing.

12 90. The EPA registers (or re-registers) a pesticide if it believes, based largely on studies
 13 and data submitted by the registrant, that:

- 14 a. its composition is such as to warrant the proposed claims for it, 7 U.S.C. §
 15 136a(c)(5)(A);
- 16 b. its labeling and other material required to be submitted comply with the
 requirements of FIFRA, 7 U.S.C. § 136a(c)(5)(B);
- 17 c. it will perform its intended function without unreasonable adverse effects on the
 18 environment, 7 U.S.C. § 136a(c)(5)(C); and
- 19 d. when used in accordance with widespread and commonly recognized practice it
 will not generally cause unreasonable adverse effects on the environment, 7 U.S.C.
 20 § 136a(c)(5)(D).

21 91. FIFRA defines “unreasonable adverse effects on the environment” as “any
 22 unreasonable risk to man or the environment, taking into account the economic, social, and
 23 environmental costs and benefits of the use of any pesticide.” 7 U.S.C. § 136(bb). Under FIFRA,
 “[a]s long as no cancellation proceedings are in effect registration of a pesticide shall be prima

1 facie evidence that the pesticide, its labeling and packaging comply with the registration provisions
2 of [FIFRA].” 7 U.S.C. § 136a(f)(2). However, FIFRA further provides that “[i]n no event shall
3 registration of an article be construed as a defense for the commission of any offense under
4 [FIFRA].” 7 U.S.C. § 136a(f)(2).

5 92. The distribution or sale of a pesticide that is misbranded is an offense under FIFRA,
6 which provides in relevant part that “it shall be unlawful for any person in any State to distribute
7 or sell to any person . . . any pesticide which is . . . misbranded.” 7 U.S.C. § 136j(a)(1)(E). A
8 pesticide is misbranded under FIFRA if, among other things:

- 9 a. its labeling bears any statement, design, or graphic representation relative thereto
10 or to its ingredients that is false or misleading in any particular, 7 U.S.C. §
11 136(q)(1)(A);
12 b. the labeling accompanying it does not contain directions for use which are
13 necessary for effecting the purpose for which the product is intended and if
14 complied with, together with any requirements imposed under Section 136a(d) of
15 the title, are adequate to protect health and the environment, 7 U.S.C. §
16 136(q)(1)(F); or
17 c. the label does not contain a warning or caution statement that may be necessary and
18 if complied with, together with any requirements imposed under section 136a(d) of
19 the title, is adequate to protect health and the environment,” 7 U.S.C. §
20 136(q)(1)(G).

21 93. Plaintiff does not seek in this action to impose on Defendants any labeling or
22 packaging requirement in addition to or different from those required under FIFRA; accordingly,
23 any allegation in this complaint that a Defendant breached a duty to provide adequate directions
for the use of paraquat or warnings about paraquat, breached a duty to provide adequate packaging
for paraquat, or concealed, suppressed, or omitted to disclose any material fact about paraquat or
engaged in any unfair or deceptive practice regarding paraquat, that allegation is intended and
should be construed to be consistent with that alleged breach, concealment, suppression, or
omission, or unfair or deceptive practice, having rendered the paraquat “misbranded” under

1 FIFRA; however, Plaintiff brings claims and seeks relief in this action only under state law, and
2 do not bring any claims or seek any relief in this action under FIFRA.

3 **I. Plaintiff Dale Smith's Paraquat Exposure**

4 94. Plaintiff Dale Smith (DOB: 4/17/61; SSN: #####-##-9591) was exposed to Paraquat
5 and/or paraquat-containing products, which had been manufactured, supplied, produced, mixed
6 and/or placed into the stream of commerce by Defendants.

7 95. More specifically, beginning in or around 1973 and continuing up through
8 approximately 1980, Dale Smith used a sprayer hitched to a tractor to spray paraquat and/or
9 paraquat-containing products in the course of his work at an apple orchard owned by Gordon
10 Roberts, deceased, in or around Oroville, Washington. This paraquat and/or paraquat-containing
11 product was purchased at a Northwest Wholesale store in or around Oroville, Washington, and
12 designed, manufactured, distributed and/or sold by Chevron U.S.A, CP Chemical, Syngenta and/or
13 Syngenta AG.

14 96. Beginning in approximately 1984 and continuing until approximately 1998, Dale
15 Smith sprayed Paraquat and/or paraquat-containing products in the course of his work as the
16 groundskeeper for Oroville Grade School and Oroville High School in Oroville, Washington. This
17 Paraquat and/or paraquat-containing product was purchased at a Chamberlin store in or around
18 Oroville, Washington, and designed, manufactured, distributed and/or sold by Chevron U.S.A, CP
19 Chemical, Syngenta and/or Syngenta AG.

20 97. As a direct and proximate result of this exposure, Plaintiff Dale Smith developed
21 Parkinson's disease ("PD"), which he was diagnosed with on or about 1997. He has now suffered
22 with PD for roughly 24 years.

23 98. Critically, before approximately April 26, 2021:

- 1 • No doctor told Plaintiff Dale Smith that his Parkinson's disease was or could have
2 been caused by exposure to paraquat.
- 3 • Plaintiff Dale Smith had never read or heard of any articles in newspapers, scientific
4 journals, or other publications that associated Parkinson's disease with paraquat.
- 5 • Plaintiff Dale Smith had never read or heard of any lawsuit alleging that paraquat
6 causes Parkinson's disease.

7 Moreover, at no time when using paraquat himself was Plaintiff Dale Smith aware that
8 exposure to paraquat could cause any latent injury, including any neurological injury or
9 Parkinson's disease, or that any precautions were necessary to prevent any latent injury that could
10 be caused by exposure to paraquat.

11 99. The paraquat to which Plaintiff Dale Smith was exposed was sold and used in
12 Washington, and was manufactured, distributed, and, on information and belief, sold by one or
13 more of the Defendants and their corporate predecessors and others with whom they acted in
14 concert intending or expecting that it would be sold and used in Washington.

15 100. On information and belief, Plaintiff Dale Smith was exposed to paraquat:

- 16 • manufactured, distributed, and sold at different times as to each Defendant, its
17 corporate predecessors, and others with whom they acted in concert, and not
18 necessarily throughout the entire period of his exposure as to any particular
19 Defendant, its corporate predecessors, and others with whom they acted in concert;
- 20 • that was sold and used in Washington, and was manufactured, distributed, and sold
21 by SCPLLC, its corporate predecessors, and others with whom they acted in
22 concert, including Chevron Chemical, intending, or expecting that it would be sold
23 and used in Washington;
- that was sold and used in Washington, and was manufactured, distributed, and sold
by SAG, its corporate predecessors, and others with whom they acted in concert,
including Chevron Chemical, intending, or expecting that it would be sold and used
in Washington;
- that was sold and used in Washington, and was manufactured, distributed, and sold
by Chevron Chemical, acting in concert with ICI and ICI Americas, intending or
expecting that it would be sold and used in Washington; and

- that was sold and used in Washington and was distributed and sold by Chamberlin and Northwest Wholesale.

IV. CLAIMS

101. Plaintiff claims liability against Defendants based upon the theories of common law negligence; strict product liability, negligence, and breach of express and implied warranties under the Washington Product Liability Act (WPLA), RCW 7.72 *et seq.*; strict product liability under Section 402A and 402B of the Restatement of Torts; conspiracy; and any other applicable theory of liability. The liability-creating conduct of Defendants consisted of negligent and unsafe design; failure to inspect, test, warn, instruct, monitor, and/or recall; failure to substitute safe products; marketing or installing unreasonably dangerous or extra-hazardous and/or defective products; marketing or installing products not reasonably safe as designed; and marketing or installing products not reasonably safe for lack of adequate warning and marketing or installing products with misrepresentations of product safety.

COUNT ONE: NEGLIGENCE

(Against All Defendants)

102. Plaintiff repeats and realleges paragraphs 1-101 as though fully set forth herein.

103. At all times relevant to this claim, Defendants, Defendants' corporate predecessors, and others with whom they acted in concert were engaged in the business of designing, manufacturing, distributing, and selling herbicides, and designed, manufactured, distributed, and sold paraquat.

104. The paraquat that Defendants, Defendants' corporate predecessors, and others with whom they acted in concert designed, manufactured, distributed, and sold and to which Plaintiff was exposed was used in the intended and directed manner or a reasonably foreseeable manner.

1 105. At all times relevant to this claim, in designing, manufacturing, packaging, labeling,
 2 distributing, and selling paraquat, and in acting in concert with others who did so, Defendants,
 3 Defendants' corporate predecessors, and others with whom they acted in concert owed a duty to
 4 exercise ordinary care for the health and safety of the persons whom it was reasonably foreseeable
 5 could be exposed to it, including Plaintiff.

6 106. When Defendants, Defendants' corporate predecessors, and others with whom they
 7 acted in concert designed, manufactured, packaged, labeled, distributed, and sold the paraquat to
 8 which Plaintiff was exposed, it was reasonably foreseeable, and Defendants, Defendants'
 9 corporate predecessors, and others with whom they acted in concert knew or in the exercise of
 10 ordinary case should have known, that when paraquat was used in the intended and directed
 11 manner or a reasonably foreseeable manner:

- 12 a. it was designed, manufactured, formulated, and packaged such that it was likely
 13 to be inhaled, ingested, and absorbed into the bodies of persons who used it, who
 14 were nearby while it was being used, or who entered fields or orchards where it
 15 had been sprayed or areas near where it had been sprayed; and
- 16 b. when inhaled, ingested, or absorbed into the bodies of persons who used it, who
 17 were nearby while it was being used, or who entered fields or orchards where it
 18 had been sprayed or areas near where it had been sprayed, it was likely to cause or
 19 contribute to cause latent neurological damage that was both permanent and
 20 cumulative, and repeated exposures were likely to cause or contribute to cause
 21 clinically significant neurodegenerative disease, including PD, to develop long
 22 after exposure.

23 107. In breach of the aforementioned duty to Plaintiff, Defendants, Defendants'
 corporate predecessors, and others with whom they acted in concert negligently:

- a. failed to design, manufacture, formulate, and package paraquat to make it unlikely
 to be inhaled, ingested, and absorbed into the bodies of persons who used it, who
 were nearby while it was being used, or who entered fields or orchards where it had
 been sprayed or areas near where it had been sprayed;

- 1 b. designed, manufactured, and formulated paraquat such that when inhaled, ingested,
2 or absorbed into the bodies of persons who used it, who were nearby while it was
3 being used, or who entered fields or orchards where it had been sprayed or areas
4 near where it had been sprayed, it was likely to cause or contribute to cause latent
5 neurological damage that was both permanent and cumulative, and repeated
6 exposures were likely to cause or contribute to cause clinically significant
7 neurodegenerative disease, including PD, to develop long after exposure;
- 8 c. failed to perform adequate testing to determine the extent to which exposure to
9 paraquat was likely to occur through inhalation, ingestion, and absorption into the
10 bodies of persons who used it, who were nearby while it was being used, or who
11 entered fields or orchards where it had been sprayed or areas near where it had been
12 sprayed;
- 13 d. failed to perform adequate testing to determine the extent to which paraquat spray
14 drift was likely to occur, including its propensity to drift, the distance it was likely
15 to drift, and the extent to which paraquat spray droplets were likely to enter the
16 bodies of persons spraying it or other persons nearby during or after spraying;
- 17 e. failed to perform adequate testing to determine the extent to which paraquat, when
18 inhaled, ingested, or absorbed into the bodies of persons who used it, who were
19 nearby while it was being used, or who entered fields or orchards where it had been
20 sprayed or areas near where it had been sprayed, was likely to cause or contribute
21 to cause latent neurological damage that was both permanent and cumulative, and
22 the extent to which repeated exposures were likely to cause or contribute to cause
23 clinically significant neurodegenerative disease, including PD, to develop long
after exposure;
- f. failed to perform adequate testing to determine the extent to which paraquat, when
formulated or mixed with surfactants or other pesticides or used along with other
pesticides, and inhaled, ingested, or absorbed into the bodies of persons who used
it, who were nearby while it was being used, or who entered fields or orchards
where it had been sprayed or areas near where it had been sprayed, was likely to
cause or contribute to cause latent neurological damage that was both permanent
and cumulative, and the extent to which repeated exposures were likely to cause or
contribute to cause clinically significant neurodegenerative disease, including PD,
to develop long after exposure;
- g. failed to direct that paraquat be used in a manner that would have made it unlikely
to have been inhaled, ingested, and absorbed into the bodies of persons who used
it, who were nearby while it was being used, or who entered fields or orchards
where it had been sprayed or areas near where it had been sprayed; and
- h. failed to warn that when inhaled, ingested, or absorbed into the bodies of persons
who used it, who were nearby while it was being used, or who entered fields or
orchards where it had been sprayed or areas near where it had been sprayed,

1 paraquat was likely to cause or contribute to cause latent neurological damage that
2 was both permanent and cumulative, and repeated exposures were likely to cause
3 or contribute to cause clinically significant neurodegenerative disease, including
4 PD, to develop long after exposure.

5 108. As a direct and proximate result of the negligence of Defendants, their corporate
6 predecessors, and others with whom they acted in concert, Plaintiff developed PD; has suffered
7 severe and permanent physical pain, mental anguish, and disability, and will continue to do so for
8 the remainder of his life; has suffered the loss of a normal life and will continue to do so for the
9 remainder of his life; has lost income that he otherwise would have earned and will continue to do
10 so for the remainder of his life; and has incurred reasonable expenses for necessary medical
11 treatment and will continue to do so for the remainder of his life.

12 **COUNT TWO: STRICT PRODUCT LIABILITY – DESIGN DEFECT**

13 **(Against Defendants Chevron USA, CP Chemical, SCPLLC and SAG)**

14 109. Plaintiff repeats and realleges paragraphs 1-108 as though fully set forth herein.

15 110. At all relevant times, Defendants, Chevron USA, CP Chemical, SCPLLC and SAG,
16 their corporate predecessors, and others with whom they acted in concert were engaged in the U.S.
17 paraquat business.

18 111. At all relevant times, Defendants Chevron USA, CP Chemical, SCPLLC and SAG,
19 their corporate predecessors, and others with whom they acted in concert were engaged in the
20 business of designing, manufacturing, distributing, and selling pesticides, and designed,
21 manufactured, distributed, and sold paraquat.

22 112. The paraquat that Defendants Chevron USA, CP Chemical, SCPLLC and SAG,
23 their corporate predecessors, and others with whom they acted in concert designed, manufactured,
distributed, and sold and to which Plaintiff was exposed was in a defective condition that made it
unreasonably dangerous, in that when used in the intended and directed manner or a reasonably

1 foreseeable manner:

- 2 a. it was designed, manufactured, formulated, and packaged such that it was likely to
3 be inhaled, ingested, and absorbed into the bodies of persons who used it, who were
4 nearby while it was being used, or who entered fields or orchards where it had been
5 sprayed or areas near where it had been sprayed; and
- 6 b. when inhaled, ingested, or absorbed into the bodies of persons who used it, who
7 were nearby while it was being used, or who entered fields or orchards where it had
8 been sprayed or areas near where it had been sprayed, it was likely to cause or
9 contribute to cause latent neurological damage that was both permanent and
10 cumulative, and repeated exposures were likely to cause or contribute to cause
11 clinically significant neurodegenerative disease, including PD, to develop long
12 after exposure.

13 113. This defective condition existed in the paraquat that Defendants Chevron USA, CP
14 Chemical, SCPLLC and SAG, their corporate predecessors, and others with whom they acted in
15 concert designed, manufactured, distributed, and sold and to which Plaintiff was exposed when it
16 left the control of Defendants Chevron USA, CP Chemical, SCPLLC and SAG, their corporate
17 predecessors, and others with whom they acted in concert and was placed into the stream of
18 commerce.

19 114. As a result of this defective condition, the paraquat that Defendants Chevron USA,
20 CP Chemical, SCPLLC and SAG, their corporate predecessors, and others with whom they acted
21 in concert designed, manufactured, distributed, and sold and to which Plaintiff was exposed either
22 failed to perform in the manner reasonably to be expected in light of its nature and intended
23 function, or the magnitude of the dangers outweighed its utility. The paraquat that Defendants,
Defendants' corporate predecessors, and others with whom they acted in concert designed,
manufactured, distributed, and sold and to which Plaintiff was exposed was used in the intended
and directed manner or a reasonably foreseeable manner.

COUNT THREE: STRICT PRODUCT LIABILITY: FAILURE TO WARN

(Against Defendants Chevron USA, CP Chemical, SCPLLC and SAG)

115. Plaintiff repeats and realleges paragraphs 1-114 as though fully set forth herein.

116. At all times relevant to this claim, Defendants Chevron USA, CP Chemical, SCPLLC and SAG, their corporate predecessors, and others with whom they acted in concert were engaged in the business of designing, manufacturing, distributing, and selling pesticides, and designed, manufactured, distributed, and sold paraquat.

117. When Defendants Chevron USA, CP Chemical, SCPLLC and SAG, their corporate predecessors, and others with whom they acted in concert designed, manufactured, distributed, and sold the paraquat to which Plaintiff was exposed, Defendants Chevron USA, CP Chemical, SCPLLC and SAG, their corporate predecessors, and others with whom they acted in concert knew or in the exercise of ordinary care should have known that when used in the intended and directed manner or a reasonably foreseeable manner:

- a. it was designed, manufactured, formulated, and packaged such that it was likely to be inhaled, ingested, and absorbed into the bodies of persons who used it, who were nearby while it was being used, or who entered fields or orchards where it had been sprayed or areas near where it had been sprayed; and
- b. when inhaled, ingested, or absorbed into the bodies of persons who used it, who were nearby while it was being used, or who entered fields or orchards where it had been sprayed or areas near where it had been sprayed, it was likely to cause or contribute to cause latent neurological damage that was both permanent and cumulative, and repeated exposures were likely to cause or contribute to cause clinically significant neurodegenerative disease, including PD, to develop long after exposure.

118. The paraquat that Defendants Chevron USA, CP Chemical, SCPLLC and SAG, their corporate predecessors, and others with whom they acted in concert designed, manufactured, distributed, and sold and to which Plaintiff was exposed was in a defective condition that made it unreasonably dangerous when it was used in the intended and directed manner or a reasonably

1 foreseeable manner, in that:

- 2 a. it was not accompanied by directions for use that would have made it unlikely to
3 be inhaled, ingested, and absorbed into the bodies of persons who used it, who were
4 nearby while it was being used, or who entered fields or orchards where it had been
5 sprayed or areas near where it had been sprayed; and
- 6 b. it was not accompanied by a warning that when inhaled, ingested, or absorbed into
7 the bodies of persons who used it, who were nearby while it was being used, or who
8 entered fields or orchards where it had been sprayed or areas near where it had been
9 sprayed, it was likely to cause or contribute to cause latent neurological damage
10 that was both permanent and cumulative, and that repeated exposures were likely
11 to cause or contribute to cause clinically significant neurodegenerative disease,
12 including PD, to develop long after exposure.

13 119. This defective condition existed in the paraquat that Defendants Chevron USA, CP
14 Chemical, SCPLLC and SAG, their corporate predecessors, and others with whom they acted in
15 concert designed, manufactured, distributed, and sold and to which Plaintiff was exposed when it
16 left the control of Defendants Chevron USA, CP Chemical, SCPLLC and SAG, their corporate
17 predecessors, and others with whom they acted in concert and was placed into the stream of
18 commerce.

19 120. As a result of this defective condition, the paraquat that Defendants Chevron USA,
20 CP Chemical, SCPLLC and SAG, their corporate predecessors, and others with whom they acted
21 in concert designed, manufactured, distributed, and sold and to which Plaintiff was exposed either
22 failed to perform in the manner reasonably to be expected in light of its nature and intended
23 function, or the magnitude of the dangers outweighed its utility.

24 121. The paraquat that Defendants Chevron USA, CP Chemical, SCPLLC and SAG,
25 their corporate predecessors, and others with whom they acted in concert designed, manufactured,
26 distributed, and sold and to which Plaintiff was exposed was used in the intended and directed
27 manner or a reasonably foreseeable manner.

1 122. As a direct and proximate result of the lack of adequate directions for the use of
2 and warnings about the dangers of the paraquat manufactured, distributed and sold by Defendants
3 Chevron USA, CP Chemical, SCPLLC and SAG, their corporate predecessors, and others with
4 whom they acted in concert, Plaintiff developed PD; has suffered severe and permanent physical
5 pain, mental anguish, and disability, and will continue to do so for the remainder of his life; has
6 suffered the loss of a normal life and will continue to do so for the remainder of his life; has lost
7 income that he otherwise would have earned and will continue to do so for the remainder of his
8 life; and has incurred reasonable expenses for necessary medical treatment and will continue to do
9 so for the remainder of his life.

10 **COUNT FOUR: BREACH EXPRESSED AND IMPLIED WARRANTIES**

11 **(Against All Defendants)**

12 123. Plaintiff repeats and realleges paragraphs 1-122 as though fully set forth herein.

13 124. At all times relevant to this claim, Defendants, Defendants' corporate predecessors,
14 and others with whom they acted in concert were engaged in the business of designing,
15 manufacturing, distributing, and selling paraquat and other restricted-use pesticides and
16 themselves out as having knowledge or skill regarding paraquat and other restricted-use pesticides.

17 125. At all times relevant to this claim, Defendants, Defendants' corporate predecessors,
18 and others with whom they acted in concert designed, manufactured, distributed, and sold
19 paraquat.

20 126. At the time of each sale of paraquat to which Plaintiff was exposed, Defendants,
21 Defendants' corporate predecessors, and others with whom they acted in concert expressly and
22 impliedly warranted that it was of merchantable quality, including that it was fit for the ordinary
23 purposes for which such goods were used.

127. Defendants, Defendants' corporate predecessors, and others with whom they acted in concert breached this warranty regarding each sale of paraquat to which Plaintiff was exposed, in that it was not of merchantable quality because it was not fit for the ordinary purposes for which such goods were used, and in particular:

- a. it was designed, manufactured, formulated, and packaged such that it was likely to be inhaled, ingested, and absorbed into the bodies of persons who used it, who were nearby while it was being used, or who entered fields or orchards where it had been sprayed or areas near where it had been sprayed; and
- b. when inhaled, ingested, or absorbed into the bodies of persons who used it, who were nearby while it was being used, or who entered fields or orchards where it had been sprayed or areas near where it had been sprayed, it was likely to cause or contribute to cause latent neurological damage that was both permanent and cumulative, and repeated exposures were likely to cause or contribute to cause clinically significant neurodegenerative disease, including PD, to develop long after exposure.

128. As a direct and proximate result of these breaches of express and implied warranties by Defendants, their corporate predecessors, and others with whom they acted in concert, Plaintiff developed PD; has suffered severe and permanent physical pain, mental anguish, and disability, and will continue to do so for the remainder of his life; has suffered the loss of a normal life and will continue to do so for the remainder of his life; has lost income that he otherwise would have earned and will continue to do so for the remainder of his life; and has incurred reasonable expenses for necessary medical treatment and will continue to do so for the remainder of his life.

V. REQUESTED RELIEF

129. Plaintiff repeats and realleges paragraphs 1-128 as though fully set forth herein.

130. As a proximate result of Defendants' negligence and/or product liability and/or other basis of liability, Plaintiff Dale Smith sustained pain, suffering, and disability in an amount not now known, but which will be proven at trial. Plaintiff Dale Smith is entitled to damages for his physical pain and suffering, mental anguish, anxiety, physical impairment, disability,

1 disfigurement, loss of enjoyment of life, and his reasonable and necessary medical bills and other
2 expenses incurred as a result of his Parkinson's disease. Plaintiff Dale Smith sustained medical
3 expenses and economic losses in an amount to be proven at trial.

4 WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as
5 follows:

- 6 a. Physical pain and suffering in the past and which, in reasonable probability, he will
7 continue to suffer in the future;
- 8 b. Physical impairment and incapacity in the past and which, in reasonable probability,
9 he will continue to suffer in the future;
- 10 c. Pain, suffering and mental anguish in the past and which, in reasonable probability, he
11 will sustain in the future;
- 12 d. Reasonable and necessary medical expenses for treatment received in the past and
13 based upon reasonable medical probability, the reasonable medical expenses he will
14 need in the future;
- 15 e. Disfigurement in the past and which, in reasonable probability, he will continue to
16 suffer in the future;
- 17 f. Disability in the past and which, in reasonable probability, he will continue to suffer in
18 the future;
- 19 g. The lost earnings and loss of future earning capacity and value of future loss of
20 household services of Plaintiff Dale Smith;
- 21 h. Plaintiff be awarded full, fair, and complete recovery for all claims and causes of action
22 relevant to this action;
- 23 i. Plaintiff be awarded all appropriate costs, fees, expenses, and pre-judgment and post
judgment interest pursuant to the laws of the State of Washington as authorized by law
on the judgments entered in Plaintiff's behalf;
- j. Other damages contemplated by law in amounts to be determined at trial; and
- k. Such other relief the court deems just and proper.

1 DATED this 21st day of June 2021.

2 WEINSTEIN CAGGIANO PLLC

3 

4 Brian D. Weinstein, WSBA No. 24497

5 Alexandra B. Caggiano, WSBA No. 47862

6 Dylan J. Johnson, WSBA No. 54147

7 600 University Street, Suite 1620

8 Seattle, Washington 98101

9 Phone: (206) 508-7070

10 Fax: (206) 237-8650

11 Counsel for Plaintiff

EXHIBIT B

RETURN OF SERVICE

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

Case Number: 21-2-08180-2 SEA

**Plaintiff:
DALE SMITH**

vs.

**Defendant:
CHEVRON U.S.A., INC.**

**Service Documents:
Summons, Complaint for Personal
Injuries, Case Information Sheet, Area
Designation and Order Setting Civil
Asbestos Case Schedule, Affidavit of
Compliance, Demand for Six (6) Person
Jury, Notice of Consent To Accept
Electronic Service per CR5(b)(7)**

**Received on 22nd of June, 2021 at 3:30 pm, to be executed at 5416 Enterprise Dr., East Wenatchee,
WA 98802 within the county of Douglas by delivering to Northwest Wholesale, Inc., through its
Registered Agent, Rodney Van Orman.**

I, Karla D Brooks, do hereby affirm that on the 28th day of June, 2021 at 12:28 pm, I:

**served a REGISTERED AGENT by delivering a true copy of the Summons, Complaint for Personal
Injuries, Case Information Sheet, Area Designation and Order Setting Civil Asbestos Case
Schedule, Affidavit of Compliance, Demand for Six (6) Person Jury, Notice of Consent To Accept
Electronic Service per CR5(b)(7) with the date and hour of service endorsed thereon by me, to: Rodney
Van Orman as Registered Agent at the address of: 5416 Enterprise Dr., East Wenatchee, WA 98802
on behalf of Northwest Wholesale, Inc..**

RETURN OF SERVICE For 21-2-08160-2 SEA

I certify that I am over the age of 18, have no interest in the above action, and declare under penalty of perjury in the State of Washington that the statements contained herein are true and correct. Signed this 30 day of June, 2021, at Washburn, Washington.

A handwritten signature in black ink, appearing to read 'K D Brooks', written over a horizontal line.

Karla D Brooks
WA Chelan County #72

Our Job Serial Number: BRO-2021000230

EXHIBIT C

DEPARTMENT 34
Trial Date: October 7, 2024

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DALE SMITH,

Plaintiff,

v.

CHEVRON U.S.A., INC., et al.,

Defendants.

NO. 21-2-08160-2 SEA

DECLARATION OF SERVICE

I, Julia Crippen, declare and state as follows:

I am and at all times herein a citizen of the United States, a resident of King County, Washington, and am over the age of 18 years.

On the 26th day of March, 2024, I caused to be served true and correct copies of the following documents to the counsel listed below:

1. Note for Judge's Motion Docket
2. Plaintiff's Motion to Compel Defendant Northwest Wholesale, Inc.'s Responses to Plaintiff's Discovery Requests;

3. Declaration of Gibbs C. Henderson in Support of Plaintiff's Motion To Compel Defendant Northwest Wholesale, Inc.'s Responses To Plaintiff's Discovery Requests, *with accompanying exhibits*;

4. Declaration of Service.

<u>CO-COUNSEL FOR PLAINTIFFS</u> Gibbs Henderson, TX Bar No. 24041084 Charles P. Stern, TX Bar No. 24106466 <i>(To Be Admitted Pro Hac Vice)</i> NACHAWATI LAW GROUP 5489 Blair Road Dallas, Texas 75231 Phone: (214) 890-0711 Email: ghenderson@ntrial.com Email: csterm@ntrial.com Email: ewood@ntrial.com Email: clopez@ntrial.com	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	Legal Messenger King County E-Service U.S. Mail Federal Express E-Mail Hand Deliver
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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, this 26th day of March, 2024.

s/ Julia Crippen

Julia Crippen
Legal Assistant

EXHIBIT D

THE HONORABLE ANGELA KAAKE
Trial Date: October 7, 2024

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DALE SMITH,

Plaintiff,

v.

CHEVRON U.S.A., INC., et al.,

Defendants.

NO. 21-2-08160-2 SEA

DECLARATION OF SERVICE

I, Julia Crippen, declare and state as follows:

I am and at all times herein a citizen of the United States, a resident of King County, Washington, and am over the age of 18 years.

On the 26th day of April, 2024, I caused to be served true and correct copies of the following documents to the counsel listed below:

1. Note for Judge's Motion Docket;
2. Plaintiff's Motion To Strike Defendant Northwest Wholesale, Inc.'s Disclosure of Possible Primary Witnesses;
3. Declaration of Charles P. Stern in Support of Plaintiff's Motion To Strike Defendant Northwest Wholesale, Inc.'s Disclosure of Possible Primary Witnesses, *with accompanying exhibits*;

4. Declaration of Service

CO-COUNSEL FOR PLAINTIFFS		
Gibbs Henderson, TX Bar No. 24041084 <i>Admitted Pro Hac Vice</i>	()	Legal Messenger
Charles P. Stern, TX Bar No. 24106466 <i>Admitted Pro Hac Vice</i>	()	King County E-Service
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20 I declare under penalty of perjury under the laws of the state of Washington that the
21 foregoing is true and correct.

22 DATED at Seattle, Washington, this 26th day of April, 2024.

23 s/ Julia Crippen

Julia Crippen

Legal Assistant

EXHIBIT E

THE HONORABLE ANGELA KAAKE
Trial Date: February 17, 2025

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DALE SMITH,

Plaintiff,

v.

CHEVRON U.S.A., INC., et al.,

Defendants.

NO. 21-2-08160-2 SEA

DECLARATION OF SERVICE

I, Julia Crippen, declare and state as follows:

I am and at all times herein a citizen of the United States, a resident of King County, Washington, and am over the age of 18 years.

On the 18th day of July, 2024, I caused to be served true and correct copies of the following documents to the counsel listed below:

1. Note for Motion Docket;
2. Plaintiff's Motion to Compel Defendant Northwest Wholesale, Inc. to Respond to and Supplement Discovery;
3. Declaration of Charles P. Stern In Support of Plaintiff's Motion to Compel Defendant Northwest Wholesale, Inc. to Respond to and Supplement Discovery, *with Accompanying Exhibits*; and

4. Declaration of Service.

<p><u>CO-COUNSEL FOR PLAINTIFFS</u> Gibbs Henderson, TX Bar No. 24041084 <i>Admitted Pro Hac Vice</i> Charles P. Stern, TX Bar No. 24106466 <i>Admitted Pro Hac Vice</i> NACHAWATI LAW GROUP 5489 Blair Road, Dallas, Texas 75231 Phone: (214) 890-0711 Email: ghenderson@ntrial.com Email: csterne@ntrial.com Email: ewood@ntrial.com Email: clopez@ntrial.com</p> <p>Khaldoun A. Baghdadi, CA Bar No. 190111 <i>Admitted Pro Hac Vice</i> Michael A. Kelly, CA Bar No. 71460 <i>Admitted Pro Hac Vice</i> Sara M. Peters, CA Bar No. 260610 <i>Admitted Pro Hac Vice</i> WALKUP, MELODIA, KELLY & SCHOENBERGER 650 California Street, 26th Floor San Francisco, CA 94108 Phone: (415) 981-7210 Email: kbaghdadi@walkuplawoffice.com Email: mkelly@walkuplawoffice.com Email: speters@walkuplawoffice.com Email: lconnors@walkuplawoffice.com Email: afreeman@walkuplawoffice.com Email: cmegino@WalkupLawOffice.com</p> <p>Peter Flowers, IL Bar No. 06210847 <i>Admitted Pro Hac Vice</i> MEYERS & FLOWERS, LLC 3 North Second St, Suite 300 St. Charles, IL 60174 Phone: (630) 232-6333 Email: pjf@meyers-flowers.com</p> <p>Robert E. Kennedy, Ohio Bar No. 0006174 <i>Admitted Pro Hac Vice</i> David C. Landever, Ohio Bar No. 0065377 <i>Admitted Pro Hac Vice</i> WEISMAN KENNEDY & BERRIS CO LPA</p>	<p>() () () () () () (X)</p>	<p>Legal Messenger King County E-Service</p> <p>U.S. Mail Federal Express E-Mail Hand Deliver</p>
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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, this 18th day of July, 2024.

s/ Julia Crippen
 Julia Crippen
 Legal Assistant

EXHIBIT F

THE HONORABLE ANGELA KAAKE
Trial Date: May 5, 2025

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DALE SMITH,

Plaintiff,

v.

CHEVRON U.S.A., INC., et al.,

Defendants.

NO. 21-2-08160-2 SEA

DECLARATION OF SERVICE

I, Julia Crippen, declare and state as follows:

I am and at all times herein a citizen of the United States, a resident of King County, Washington, and am over the age of 18 years.

On the 9th day of October, 2024, I caused to be served true and correct copies of the following documents to the counsel listed below:

1. Notice for Hearing;
2. Plaintiff's Motion for Leave to Serve Additional Interrogatories Upon Defendant Northwest Wholesale, Inc.;
3. Declaration of Charles P. Stern in Support of Plaintiff's Motion for Leave to Serve Additional Interrogatories Upon Defendant Northwest Wholesale, Inc, *with accompanying exhibits*; and

4. Declaration of Service.

<p><u>CO-COUNSEL FOR PLAINTIFFS</u> Gibbs Henderson, TX Bar No. 24041084 <i>Admitted Pro Hac Vice</i> Charles P. Stern, TX Bar No. 24106466 <i>Admitted Pro Hac Vice</i> NACHAWATI LAW GROUP 5489 Blair Road, Dallas, Texas 75231 Phone: (214) 890-0711 Email: ghenderson@ntrial.com Email: csterne@ntrial.com Email: ewood@ntrial.com Email: clopez@ntrial.com</p> <p>Khaldoun A. Baghdadi, CA Bar No. 190111 <i>Admitted Pro Hac Vice</i> Michael A. Kelly, CA Bar No. 71460 <i>Admitted Pro Hac Vice</i> Sara M. Peters, CA Bar No. 260610 <i>Admitted Pro Hac Vice</i> WALKUP, MELODIA, KELLY & SCHOENBERGER 650 California Street, 26th Floor San Francisco, CA 94108 Phone: (415) 981-7210 Email: kbaghdadi@walkuplawoffice.com Email: mkelly@walkuplawoffice.com Email: speters@walkuplawoffice.com Email: lconnors@walkuplawoffice.com Email: afreeman@walkuplawoffice.com Email: cmegino@WalkupLawOffice.com</p> <p>Peter Flowers, IL Bar No. 06210847 <i>Admitted Pro Hac Vice</i> Frank Cesarone, IL Bar No. 6307510 <i>(To Be Admitted Pro Hac Vice)</i> MEYERS & FLOWERS, LLC 3 North Second St, Suite 300 St. Charles, IL 60174 Phone: (630) 232-6333 Email: pjf@meyers-flowers.com Email: fvc@meyers-flowers.com</p> <p>Robert E. Kennedy, Ohio Bar No. 0006174 <i>Admitted Pro Hac Vice</i></p>	<p>() () () () () () (X)</p>	<p>Legal Messenger King County E-Service</p> <p>U.S. Mail Federal Express E-Mail Hand Deliver</p>
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32	Fax: 206-274-6401		
33	Email: ari.sillman@morganlewis.com		
34	Email: angelo.calfo@morganlewis.com		
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38	Ragan Naresh, DC No. 984732		
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40	Whitney Leets, IL No. 6336246		

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, this 9th day of October, 2024.

s/ Julia Crippen
Julia Crippen
Legal Assistant

EXHIBIT G

From: [Julia Crippen](#)
To: afreeman@walkuplawoffice.com; [Andrew DeCarlow](#); [Angelo Calfo](#); [Brad Weidenhammer](#); [Carol Arkins](#); [Cassandra Catalano](#); [Charlie Stern](#); [Chelsey L. Mam](#); [Christopher D. Mack](#); [Cindy Lopez](#); [Daine Marsh](#); dana.camacho@alston.com; [Danielle R. Leneck](#); [David C. Landever](#); [Debra R. Belott](#); Denise@dadkp.com; drozman@weismanlaw.com; [Elisabeth Read](#); erin.fujita@bcdplaw.com; [Erin Wood](#); [Gibbs Henderson](#); [Jason Levin](#); [Julie M.K. Siegal](#); [Khalidoun A. Baghdadi](#); klangridge@bpmlaw.com; [Kristin M. Lahaszow](#); lconnors@walkuplawoffice.com; [Leon F. DeJulius Jr.](#); [Leslie Smith](#); lixi.colmenero@morganlewis.com; Imiranda@WalkupLawOffice.com; [Melanie K. Chan](#); [Michael A. Kelly](#); [Michael A. Magee](#); [Michael F. Gosling](#); [Paul Sampson](#); [Per Jansen](#); [Peter Flowers](#); [Ragan Naresh](#); [Robert E. Kennedy](#); [Samantha A. Shaw](#); [Sara M. Peters](#); [Service](#); [Sharyn A. Reisman](#); [Shawna M. Lydon](#); skangas@bpmlaw.com; [Thomas F. O'Connell](#); trang.la@morganlewis.com; [Tyler L. Farmer](#)
Subject: Smith v Chevron - Notice of Intent to Take Video Dep of NWW's 30b6 Witness & DOS
Date: Thursday, May 23, 2024 3:23:20 PM
Attachments: [image001.png](#)
[2024-05-23.Smith.P's NOVD of NWW 30b6.pdf](#)
[2024-05-23.Smith.DOS \(P's NOVD of NWW 30b6\).pdf](#)

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Please see attached:

1. Plaintiff's Notice of Intent to Take the Videotaped Deposition of Defendant Northwest Wholesale, Inc.'s 30(b)(6) Witness; and
2. Declaration of Service.



Weinstein Caggiano PLLC

Julia Crippen

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EXHIBIT H

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

DALE SMITH,)	
)	
Plaintiff,)	
)	No. 21-2-08160-2 SEA
vs.)	
)	
CHEVRON U.S.A., INC., et al.,)	
)	
Defendants.)	
)	

Deposition Upon Oral Examination

of

NORTHWEST WHOLESALE, INC.
30(b)(6) DEPOSITION, BY RODNEY VAN ORMAN

Taken at 701 Pike Street, Suite 1025
Seattle, Washington

DATE: September 25, 2024

REPORTED BY: Wade J. Johnson, RPR
CCR No.: 2574

Page 2

A P P E A R A N C E S

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Gabe Fabens

--oOo--

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* * *

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* * * *

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Page 5

SEATTLE, WASHINGTON; WEDNESDAY, SEPTEMBER 25, 2024

8:43 A.M.

--oOo--

THE VIDEOGRAPHER: Good morning,

everyone. We are going on the record now. The time is 8:43 a.m. The date is September 25th, 2024. This is Volume 1, Media Unit 1 of the video-recorded deposition of Rodney Van Orman. And this is taken in the matter of Smith vs. Chevron USA, Incorporated, et al. And this is filed in the Superior Court of the State of Washington in and for County of King. The case number is 21-2-08160-2 SEA.

And this deposition is being held at the offices of Betts Patterson & Mines, in Seattle, at 701 Pike Street, in Suite 1025, Seattle, Washington 98101.

My name is Gabe Fabens; I'm the videographer. The court reporter is Wade Johnson. And today we are both on behalf of Pohlman Reporting Company.

And, Counsel, will you please identify yourself for the record, and the witness may be sworn in.

MR. STERN: Charlie Stern, plaintiff.

MS. LYDON: Shawna Lydon, on behalf of

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(877) 421-0099 PohlmanUSA.com

1 C E R T I F I C A T E

2 STATE OF WASHINGTON)
3) ss
4 COUNTY OF KING)

5 I, the undersigned Washington Certified Court
6 Reporter, pursuant to RCW 5.28.010, authorized to
7 administer oaths and affirmations in and for the State
8 of Washington, do hereby certify: That the foregoing
9 deposition of the witness named herein was taken
10 stenographically before me and reduced to a typed
11 format under my direction;

12 That, according to CR 30(e), the witness was
13 given the opportunity to examine, read and sign the
14 deposition after same was transcribed, unless indicated
15 in the record that the review was waived;

16 That I am not a relative or employee of any
17 attorney or counsel or participant and that I am not
18 financially or otherwise interested in the action or
19 the outcome herein;

20 That the deposition, as transcribed, is a
21 full, true and correct transcript of the testimony,
22 including questions and answers and all objections,
23 motions and examinations and said transcript was
24 prepared pursuant to the Washington Administrative Code
25 308-14-135 preparation guidelines.

/s/WADE J. JOHNSON, CCR
State of Washington CCR #2574
My CCR certification expires on 09/18/25.

EXHIBIT I



February 8, 2025

CONFIDENTIAL

Via E-Mail: acohen@bpmlaw.com

Ms. Anne Cohen

BETTS PATTERSON & MINES, P.S.

701 Pike Street, Suite 1400

Seattle, WA 98101

Re: *Dale Smith vs. Chevron U.S.A., Inc.; Et al.*; Case No. 21-2-08160-2 SEA; filed in the Superior Court of the State of Washington, King County.

Dear Counsel:

As indicated in my January 24, 2025 letter, the operative case management order requires the parties to engage in alternative dispute resolution by April 7, 2025. As of today, Plaintiff is waiting for a substantive response to said letter.

In hopes of facilitating a response and in an effort to make any mediation more meaningful, Plaintiff hereby makes a settlement demand of _____ for full and final settlement of his claims against Northwest Wholesale, Inc.

I am happy to discuss this further.

This demand is confidential. As this litigation is ongoing, Plaintiff reserves the right to modify this demand.

Please confirm receipt of this letter.

Best,

A handwritten signature in blue ink, appearing to read "Ch" followed by a stylized flourish.

Charlie Stern

CPS/cl

cc: Khaldoun A. Baghdadi – Via E-Mail
Peter Flowers – Via E-Mail
Gibbs C. Henderson – Via E-Mail

O: 214.890.0711

F: 214.890.0712

5489 Blair Road, Dallas, TX 75231

From: [Cindy Lopez](#)
To: ["jacohen@bpmlaw.com"](mailto:jacohen@bpmlaw.com)
Cc: [Charlie Stern](#); kbaghdadi@walkuplawoffice.com; pjf@meyers-flowers.com; [Gibbs Henderson](#)
Subject: Dale Smith vs. Northwest Wholesale Inc.; Case No. 21-2-08160-2 SEA - Confidential Correspondence
Date: Saturday, February 8, 2025 11:08:17 AM
Attachments: [image001.png](#)
[2025.0208 Letter NWW re demand.pdf](#)

Dear Counsel,

Please see attached correspondence forwarded on behalf of attorney Charlie Stern with regard to the above-referenced matter.

Thank you.

Cindy Lopez
Paralegal

D: 469-324-0747 O: 214-890-0711 F: 214-890-0712



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EXHIBIT J

The Honorable Jason Poydras
Date of Motion: January 17, 2025
Nature of Motion: Motion to Continue
Without Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

DALE SMITH,

Plaintiff,

vs.

CHEVRON U.S.A., INC.; CHEVRON
PHILLIPS CHEMICAL COMPANY LP;
CHAMBERLIN DISTRIBUTING
COMPANY, INC. d/b/a CHAMBERLIN
AGRICULTURE; NORTHWEST
WHOLESALE, INC.; SYGENTA CROP
PROTECTION, LLC; and SYNGENTA AG,

Defendants.

NO. 21-2-08160-2 SEA

DEFENDANT NORTHWEST
WHOLESALE, INC.'S SUPPLEMENT TO
ITS MOTION TO CONTINUE TRIAL
DATE AND PRETRIAL DATES AND
CONFERENCES

Defendant Northwest Wholesale, Inc. ("NWW") continues to request the same relief requested in its Motion to Continue Trial Date and Pretrial Dates and Continue Time to Respond to Pending Motions (Dkt. 383)("Motion to Continue"). In other words, NWW continues to request a continuance of the trial date and pending pre-trial deadlines and enlarging the time that NWW has to respond to the following pending motions: Dkt 323- Chevron USA Inc's Motion for Summary Judgment; Dkt 366 Plaintiff's Motion to Exclude Certain Testimony of Elizabeth L. Anderson, PhD. ATS Fellow; Dkt. 373 Plaintiff's Motion to Exclude Certain Testimony of Mark Lew, MD.

DEFENDANT NORTHWEST WHOLESALE,
INC.'S SUPPLEMENT TO ITS MOTION TO
CONTINUE TRIAL DATE AND PRETRIAL
DATES AND CONFERENCES

- 1 -

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1 NWW files this supplement so that the court may be fully advised as to its changed
 2 circumstances since the briefing on its Motion to Continue has been completed, namely that NWW
 3 is no longer seeking to substitute James Murphy of Murphy Armstrong, LLP into this matter as
 4 counsel.¹ Therefore, Mr. Murphy's conflict with the existing trial date is no longer a reason for
 5 NWW's motion to continue.

6 However, the undersigned still has her own conflict with the existing trial date. *Peterson*
 7 *v. Kennewick*, et. al., Case No. 19-2-02157-8 SEA has been pending since 2018 (having begun
 8 with service of an unfiled Complaint that was removed to US District Court and then remanded)
 9 and filed since 2019. Dkt. 1.

10 On Reply, NWW pointed out that even if Mr. Murphy was not allowed to substitute in as
 11 counsel for NWW, the undersigned has her own existing conflict with the current May 5, 2025
 12 trial date. *Peterson v. Kennewick*, et. al., Case No. 19-2-02157-8 SEA has been pending since 2018
 13 (having begun with service of an unfiled Complaint that was removed to US District Court and
 14 then remanded) and filed since 2019. Dkt. 1.

15 On Friday, February 7, 2025, the undersigned learned that NWW agreed that she should
 16 continue to represent NWW in this matter, forgoing its earlier request that James Murphy should
 17 substitute in as counsel for NWW. A call was placed to Mr. Stern, counsel for Plaintiff, and he
 18 was informed that the undersigned would be continuing on as trial counsel for NWW. See, Second
 19 Supplemental Declaration of A. Cohen, ¶ 2. ("Cohen Decl."). The undersigned pointed out to Mr.
 20 Stern that her own trial conflict, her lack of prior involvement in this matter, and lack of knowledge
 21 about this matter still supports NWW's Motion to Continue. Mr. Stern asked the court to be
 22 notified immediately via email and this was done. Cohen Decl., ¶ 3.

23 _____
 24 ¹ As previously explained, attorney Shawna Lydon had been counsel for NWW since Karen
 25 Bamberger left her employment at BPM. On December 31, 2024, Shawna Lydon ceased her
 employment at BPM.

DEFENDANT NORTHWEST WHOLESALE,
 INC.'S SUPPLEMENT TO ITS MOTION TO
 CONTINUE TRIAL DATE AND PRETRIAL
 DATES AND CONFERENCES

1 There is a pending motion to continue in *Peterson*, which my office filed on January 28,
 2 2025. The motion to continue in the *Peterson* matter is wholly based on the circumstances in the
 3 *Peterson* matter and is entirely unrelated to the status of this matter. Plaintiffs in the *Peterson*
 4 matter opposed that motion to continue, and the undersigned is aware of no decision by Judge
 5 Dixon as of the time of this writing. Absent Judge Dixon granting the undersigned's motion to
 6 continue in the *Peterson* matter, the trial date in the *Peterson* matter remains May 12, 2025.

7 To the extent the trial date in *Peterson* is continued, that would cure the trial conflict the
 8 undersigned has with the current trial date in this matter. However, it does not change the fact that
 9 NWW would still be prejudiced if required to go to trial in May 2025 under the circumstances
 10 presented here.

11 In a 41-page Complaint, Plaintiff asserts that he was injured by exposure to parquat and/or
 12 parquat-containing products, including those allegedly purchased at a NWW store and that this
 13 exposure caused him Parkinson's disease. *See*, Complaint. Dkt. 1. Plaintiff's claims against NWW
 14 include negligence and breach of express and implied warranties. From the Complaint, Plaintiff
 15 appears to claim that NWW – allegedly a distributor – knew or should have known that parquat
 16 has “redox properties” which allegedly triggers the production of superoxide radicals, ultimately
 17 causing oxidative stress that contributes to latent neurodegenerative damage. *Id.*

18 The court retains the discretion to grant NWW a short continuance so as to allow the
 19 undersigned as newly substituted counsel for NWW to adequately prepare for its defense at trial
 20 in this matter while meeting her obligation to her clients and the court in the *Peterson* matter.

21 I certify that this memorandum contains 736 words, in compliance with the Local Civil
 22 Rules.

23
 24
 25
 DEFENDANT NORTHWEST WHOLESALE,
 INC.'S SUPPLEMENT TO ITS MOTION TO
 CONTINUE TRIAL DATE AND PRETRIAL
 DATES AND CONFERENCES

- 3 -

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1 DATED this 11th day of February, 2025.

2 BETTS, PATTERSON & MINES, P.S.

3 By s/ Anne Cohen

4 Anne Cohen, WSBA #41183
5 Attorneys for Defendant Northwest
6 Wholesale, Inc.
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DEFENDANT NORTHWEST WHOLESALE,
INC.'S SUPPLEMENT TO ITS MOTION TO
CONTINUE TRIAL DATE AND PRETRIAL
DATES AND CONFERENCES

- 4 -

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CERTIFICATE OF SERVICE

I, Cheryl Erickson, declare as follows:

1) I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within entitled cause. I am employed by the law firm of Betts, Patterson & Mines, P.S.

2) By the end of the business day on February 11, 2025, I caused to be served upon counsel of record at the addresses and in the manner described below, the following documents:

- **Defendant Northwest Wholesale, Inc.'s Supplement To Its Motion To Continue Trial Date And Pretrial Dates And Conferences;**
- **Second Supplemental Declaration Of Anne Cohen In Support Of Defendant Northwest Wholesale, Inc.'s Supplement To Its Motion To Continue Trial Date And Pretrial Dates And Conferences**
- **Certificate of Service.**

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| <input type="checkbox"/> | Facsimile |
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DEFENDANT NORTHWEST WHOLESALE,
INC.'S SUPPLEMENT TO ITS MOTION TO
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DATES AND CONFERENCES

- 5 -

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DEFENDANT NORTHWEST WHOLESALE,
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 CONTINUE TRIAL DATE AND PRETRIAL
 DATES AND CONFERENCES

- 6 -

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DEFENDANT NORTHWEST WHOLESALE,
INC.'S SUPPLEMENT TO ITS MOTION TO
CONTINUE TRIAL DATE AND PRETRIAL
DATES AND CONFERENCES

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DEFENDANT NORTHWEST WHOLESALE,
 INC.'S SUPPLEMENT TO ITS MOTION TO
 CONTINUE TRIAL DATE AND PRETRIAL
 DATES AND CONFERENCES

- 8 -

**Betts
 Patterson
 Mines**
One Convention Place
 Suite 1025
 701 Pike Street
 Seattle, Washington 98101
 (206) 292-9988

Counsel for Defendants Syngenta Crop Protection:

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Co-Counsel for NW Wholesale:

Thomas F. O'Connell
 Davis Arneil Law Firm, LLP
 617 Washington Street
 Wenatchee, WA 98801-2600
 tom@dadkp.com

☐ KCSC E-service
☐ U.S. Mail
☐ Hand Delivery
☐ Facsimile
☐ Overnight
☒ Email

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 11th day of February, 2025.

/s Cheryl Erickson

Cheryl Erickson

DEFENDANT NORTHWEST WHOLESALE,
 INC.'S SUPPLEMENT TO ITS MOTION TO
 CONTINUE TRIAL DATE AND PRETRIAL
 DATES AND CONFERENCES

- 9 -

**Betts
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 Mines**
One Convention Place
 Suite 1025
 701 Pike Street
 Seattle, Washington 98101
 (206) 292-9988

EXHIBIT K

Cindy Lopez

Subject: FW: RCW 408 Settlement offer from NWW

From: Charlie Stern <cstern@ntrial.com>
Sent: Thursday, February 20, 2025 9:54 AM
To: Anne Cohen <acohen@bpmlaw.com>
Cc: Cheryl J. Erickson <cerickson@bpmlaw.com>
Subject: Re: RCW 408 Settlement offer from NWW

I am happy to discuss the drafting of the formal agreement you mention below when you are back or available.

But this email is an agreement to your client's terms articulated below.

I have emailed the Court with you cc'd.

Have a good day.

From: Charlie Stern <cstern@ntrial.com>
Sent: Thursday, February 20, 2025 9:45 AM
To: Anne Cohen <acohen@bpmlaw.com>
Cc: Cheryl J. Erickson <cerickson@bpmlaw.com>
Subject: Re: RCW 408 Settlement offer from NWW

We accept the settlement offer. I will email the Court with you CC'd as discussed below.

From: Anne Cohen <acohen@bpmlaw.com>
Sent: Thursday, February 20, 2025 8:57 AM
To: Charlie Stern <cstern@ntrial.com>
Cc: Cheryl J. Erickson <cerickson@bpmlaw.com>
Subject: RE: RCW 408 Settlement offer from NWW

This message originated from outside your organization

Absolutely. If you send me an email accepting the offer, then I have no problem with your client simply informing the court that the claims against NWW are resolved and as a result, NWW withdraws its motion to continue. That way, there's less likelihood the time difference will get in our way.

You can tell the court that a formal document striking the motion to continue will be forthcoming.

Sincerely,

Anne Cohen

Managing Shareholder

Admitted in Oregon, Washington and Utah

Betts, Patterson & Mines, P.S.

US Bancorp Tower

111 SW 5th Avenue, Suite 3650

Portland, OR 97204

D 503.961.6540 | F 503.961.6339



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From: Charlie Stern <cstern@ntrial.com>
Sent: Thursday, February 20, 2025 6:34 AM
To: Anne Cohen <acohen@bpmlaw.com>
Subject: Re: RCW 408 Settlement offer from NWW

If my client accepts, I assume that we can send an immediate joint email to the Court indicating that the Motion to Continue is stricken and that the Court can anticipate an immediate Notice to Strike?

From: Anne Cohen <acohen@bpmlaw.com>
Sent: Thursday, February 20, 2025 8:26 AM
To: Charlie Stern <cstern@ntrial.com>
Subject: RCW 408 Settlement offer from NWW

This message originated from outside your organization

RCW 408 Settlement communication – not admissible at trial for any purpose

Hi Charles,

I have authority to offer _____ to fully, finally and forever resolve any and all claims against Northwest Wholesale, Inc. This offer anticipates the drafting of a settlement agreement to be signed by our respective clients, and to include a confidentiality provision. I know you disagree, but my folks feel strongly that NWW should never have been in this case to begin with.

I can also tell you that Judge Dixon declined to continue the *Peterson* trial date.

I traveling in Germany through the end of the week, so please be aware of the time difference for further settlement communication.

Sincerely,

Anne Cohen

Managing Shareholder

Admitted in Oregon, Washington and Utah

Betts, Patterson & Mines, P.S.

US Bancorp Tower

111 SW 5th Avenue, Suite 3650

Portland, OR 97204

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From: Charlie Stern <cstern@ntrial.com>

Sent: Wednesday, February 19, 2025 3:16 PM

To: Anne Cohen <acohen@bpmlaw.com>

Subject: Re: You free for a call? Meet and Confer re Supplemental Motion - Smith

Anne, I havent heard back from you.

Do you have any updates?

From: Charlie Stern <cstern@ntrial.com>
Sent: Tuesday, February 18, 2025 8:58 AM
To: Anne Cohen <acohen@bpmlaw.com>
Subject: Re: You free for a call? Meet and Confer re Supplemental Motion - Smith

Anne,

I am available to talk if needed. As discussed yesterday during our call, if there is a possibility of anything happening, we need to talk ASAP.

Charlie

From: Charlie Stern <cstern@ntrial.com>
Sent: Monday, February 17, 2025 10:11 AM
To: Anne Cohen <acohen@bpmlaw.com>
Subject: Re: You free for a call? Meet and Confer re Supplemental Motion - Smith

Talk then.

I assume you have presented the demand to your client. If you have authority in response to my demand or a counter-offer, that would be helpful.

Time is of the essence. We can chat at 1pm your time.

From: Anne Cohen <acohen@bpmlaw.com>
Sent: Monday, February 17, 2025 9:50 AM
To: Charlie Stern <cstern@ntrial.com>
Subject: RE: You free for a call? Meet and Confer re Supplemental Motion - Smith

This message originated from outside your organization

My direct dial is 503-961-6540.

Anne Cohen

Managing Shareholder

Admitted in Oregon, Washington and Utah

Betts, Patterson & Mines, P.S.

US Bancorp Tower

111 SW 5th Avenue, Suite 3650

Portland, OR 97204

D 503.961.6540 | F 503.961.6339



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From: Charlie Stern <csfern@ntrial.com>

Sent: Monday, February 17, 2025 7:22 AM

To: Anne Cohen <acohen@bpmlaw.com>

Subject: Re: You free for a call? Meet and Confer re Supplemental Motion - Smith

Sounds good. That is 3 my time. What # can I call you at?

From: Anne Cohen <acohen@bpmlaw.com>

Sent: Monday, February 17, 2025 9:14 AM

To: Charlie Stern <cstern@ntrial.com>

Subject: RE: You free for a call? Meet and Confer re Supplemental Motion - Smith

This message originated from outside your organization

How about 1 pm?

Anne Cohen

Managing Shareholder

Admitted in Oregon, Washington and Utah

Betts, Patterson & Mines, P.S.

US Bancorp Tower

111 SW 5th Avenue, Suite 3650

Portland, OR 97204

D 503.961.6540 | F 503.961.6339



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From: Charlie Stern <cstern@ntrial.com>
Sent: Monday, February 17, 2025 6:54 AM
To: Anne Cohen <acohen@bpmlaw.com>
Subject: Re: You free for a call? Meet and Confer re Supplemental Motion - Smith

Great.

What time works? I am free.

From: Anne Cohen <acohen@bpmlaw.com>
Sent: Monday, February 17, 2025 8:51 AM
To: Charlie Stern <cstern@ntrial.com>
Subject: RE: You free for a call? Meet and Confer re Supplemental Motion - Smith

This message originated from outside your organization

Hi Charles,

I am just seeing your email from Saturday now. Unless I am expecting something, I don't generally check my email over the weekend.

I'm available for a call in the afternoon today, with the caveat that I am trying to set up another call for a submission in another case by noon tomorrow.

Sincerely,

Anne Cohen

Managing Shareholder

Admitted in Oregon, Washington and Utah

Betts, Patterson & Mines, P.S.

US Bancorp Tower

111 SW 5th Avenue, Suite 3650

Portland, OR 97204

D 503.961.6540 | F 503.961.6339



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From: Charlie Stern <cstern@ntrial.com>
Sent: Sunday, February 16, 2025 11:57 AM
To: Anne Cohen <acohen@bpmlaw.com>
Subject: Re: You free for a call? Meet and Confer re Supplemental Motion - Smith

Anne, this is the third email I have sent to you hoping to meet and confer with you regarding your motion. If I do not hear back, I will be calling you at 9am your time tomorrow (2/17/25).

Please call me if you get this email.

214-608-6929

From: Charlie Stern <cstern@ntrial.com>
Sent: Saturday, February 15, 2025 7:36 AM
To: Anne Cohen <acohen@bpmlaw.com>
Subject: Re: You free for a call?

I never heard back from you.

Give me a call this weekend if you can.

I'd like to discuss a few things involving your and my clients.

From: Charlie Stern
Sent: Friday, February 14, 2025 2:52 PM
To: Anne Cohen <acohen@bpmlaw.com>
Subject: You free for a call?

If so, call me at 214-608-6929

Get [Outlook for iOS](#)

EXHIBIT L

THE HONORABLE MARY ROBERTS
Trial Date: December 12, 2022

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DALE SMITH,

Plaintiff,

v.

CHEVRON U.S.A., INC., et al.,

Defendants.

NO. 21-2-08160-2 SEA

I, Tammy Covert, declare and state as follows:

1. I am and at all times herein a citizen of the United States, a resident of Dallas County, Texas, and am over the age of 18 years.
2. On the 30th day of September 2021, I caused to be served true and correct copies of:
 - (1) Plaintiff's First Set of Interrogatories and Requests for Production Propounded to Defendant Northwest Wholesale, Inc.; and
 - (2) Declaration of Service on the following:

<u>CHAMBERLIN DISTRIBUTING COMPANY, INC.</u> Tyler D. Hotchkiss, WSBA No. 40604 Mari Foreman Groff, WSBA No. 56030 Foreman, Hotchkiss, Bauscher & Zimmerman, PLLC 124 N. Wenatchee Ave., Suite A Wenatchee, Washington Email: tyler@fhbzlaw.com Email: mari@fhbzlaw.com	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Service/E-Mail <input type="checkbox"/> Hand Deliver
<u>CHAMBERLIN DISTRIBUTING COMPANY, INC.</u> Megan Cook, WSBA No. 45943 Bullivant Houser Bailey, PC One SW Columbia St., Suite 800 Portland, OR 97204 Phone: (503) 228-6351 Email: megan.cook@bullivant.com	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Service/E-Mail <input type="checkbox"/> Hand Deliver
<u>CHAMBERLIN DISTRIBUTING COMPANY, INC.</u> Monica Ghosh Bullivant Houser Bailey PC 925 Fourth Avenue, Suite 3800 Seattle, WA 98104 Phone: (206) 521-6476 Email: monica.ghosh@bullivant.com	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Service/E-Mail <input type="checkbox"/> Hand Deliver
<u>NORTHWEST WHOLESALE, INC.</u> Thomas F. O'Connell, WSBA No. 16539 Davis, Arneil Law Firm, LLP 617 Washington Street Wenatchee, WA 98801 Phone: 509-662-3551 Email: tom@dadkp.com Email: ruth@dadkp.com	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Federal Express <input checked="" type="checkbox"/> E-Service/E-Mail <input type="checkbox"/> Hand Deliver
<u>NORTHWEST WHOLESALE, INC.</u> S. Karen Bamberger, WSBA No. 18478 Betts Patterson & Mines, P.S. 701 Pike Street, Suite 1400 Seattle, WA 98101-3927 Phone: 206-292-9988 kbamberger@bpmlaw.com	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Federal Express <input checked="" type="checkbox"/> E-Service/E-Mail <input type="checkbox"/> Hand Deliver
<u>SYNGENTA CROP PROTECTION, LLC</u> <u>SYNGENTA AG</u> Angelo J. Calfo, WSBA No. 27079 Calfo Eakes LLP 1301 Second Avenue, Suite 2800 Seattle, WA 98101 Phone: (206) 407-2200 Fax: (206) 407-2224 Email: angeloc@calfoeakes.com	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Service/E-Mail <input type="checkbox"/> Hand Deliver

SYNGENTA CROP PROTECTION, LLC**SYNGENTA AG**

Ragan Naresh, DC No. 984732
 1301 Pennsylvania Ave. NW
 Washington, DC 20004
 Phone: (202) 389-5267
 Email: ragan.naresh@kirkland.com

- ☐ Legal Messenger
☐ Facsimile
☐ U.S. Mail
☐ Federal Express
☐ E-Service/E-Mail
☐ Hand Deliver

CHEVRON U.S.A., INC.

Jason Levin, WSBN 21964
 Steptoe & Johnson LLP
 633 West Fifth Street, Suite 1900
 Los Angeles, CA 90071
 Phone: (213) 439-9455
jlevin@steptoe.com

- ☐ Legal Messenger
☐ Facsimile
☐ U.S. Mail
☐ Federal Express
☐ E-Service/E-Mail
☐ Hand Deliver

I declare under penalty of perjury under the laws of the state of Texas that the foregoing is true and correct.

DATED at Dallas, Texas, this 30th day of September 2021.

FEARS NACHAWATI PLLC

/s/ Tammy Covert

Tammy Covert
 Paralegal

THE HONORABLE MARY ROBERTS
Trial Date: December 12, 2022

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DALE SMITH,

Plaintiff,

v.

CHEVRON U.S.A., INC., et al.,

Defendants.

NO. 21-2-08160-2 SEA

I, Tammy Covert, declare and state as follows:

1. I am and at all times herein a citizen of the United States, a resident of Dallas County, Texas, and am over the age of 18 years.
2. On the 16th day of November 2021, I caused to be served true and correct copies of:
 - (1) Plaintiff's Second Set of Interrogatories Propounded to Defendant Northwest Wholesale, Inc.; and
 - (2) Declaration of Service on the following:

<u>CHAMBERLIN DISTRIBUTING COMPANY, INC.</u> Tyler D. Hotchkiss, WSBA No. 40604 Mari Foreman Groff, WSBA No. 56030 FOREMAN, HOTCHKISS, BAUSCHER & ZIMMERMAN, PLLC 124 N. Wenatchee Ave., Suite A Wenatchee, Washington Email: tyler@fhbzlaw.com Email: mari@fhbzlaw.com	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Service/E-Mail <input type="checkbox"/> Hand Deliver
<u>CHAMBERLIN DISTRIBUTING COMPANY, INC.</u> Megan Cook, WSBA No. 45943 BULLIVANT HOUSER BAILEY, PC One SW Columbia St., Suite 800 Portland, OR 97204 Phone: (503) 228-6351 Email: megan.cook@bullivant.com	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Service/E-Mail <input type="checkbox"/> Hand Deliver
<u>CHAMBERLIN DISTRIBUTING COMPANY, INC.</u> Monica Ghosh BULLIVANT HOUSER BAILEY PC 925 Fourth Avenue, Suite 3800 Seattle, WA 98104 Phone: (206) 521-6476 Email: monica.ghosh@bullivant.com	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Service/E-Mail <input type="checkbox"/> Hand Deliver
<u>NORTHWEST WHOLESALE, INC.</u> Thomas F. O'Connell, WSBA No. 16539 DAVIS, ARNEIL LAW FIRM, LLP 617 Washington Street Wenatchee, WA 98801 Phone: 509-662-3551 Email: tom@dadkp.com Email: christine@dadkp.com	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Federal Express <input checked="" type="checkbox"/> E-Service/E-Mail <input type="checkbox"/> Hand Deliver
<u>NORTHWEST WHOLESALE, INC.</u> S. Karen Bamberger, WSBA No. 18478 BETTS PATTERSON & MINES, P.S. 701 Pike Street, Suite 1400 Seattle, WA 98101-3927 Phone: 206-292-9988 kbamberger@bpmlaw.com	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Federal Express <input checked="" type="checkbox"/> E-Service/E-Mail <input type="checkbox"/> Hand Deliver
<u>SYNGENTA CROP PROTECTION, LLC</u> Angelo J. Calfo, WSBA No. 27079 CALFO EAKES LLP 1301 Second Avenue, Suite 2800 Seattle, WA 98101 Phone: (206) 407-2200 Fax: (206) 407-2224 Email: angeloc@calfoeakes.com	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Service/E-Mail <input type="checkbox"/> Hand Deliver

<u>SYNGENTA CROP PROTECTION, LLC</u> Ragan Naresh, DC No. 984732 KIRKLAND & ELLIS 1301 Pennsylvania Ave. NW Washington, DC 20004 Phone: (202) 389-5267 Email: ragan.naresh@kirkland.com	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Service/E-Mail <input type="checkbox"/> Hand Deliver
<u>SYNGENTA CROP PROTECTION, LLC</u> Leslie Smith, IL No. 6275944 Brad Weidenhammer, IL No. 6284229 KIRKLAND & ELLIS 300 North LaSalle Chicago, IL 60654 Phone: (312) 862-2141 Email: lsmith@kirkland.com Email: bweidenhammer@kirkland.com	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Service/E-Mail <input type="checkbox"/> Hand Deliver
<u>CHEVRON U.S.A., INC.</u> Jason Levin, WSBN 21964 STEPTOE & JOHNSON LLP 633 West Fifth Street, Suite 1900 Los Angeles, CA 90071 Phone: (213) 439-9455 Email: jlevin@steptoe.com	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Service/E-Mail <input type="checkbox"/> Hand Deliver
<u>CHEVRON U.S.A., INC.</u> Debra R. Belott, WSBN 993507 JONES DAY 51 Louisiana Ave., N.W. Washington, DC 20001-2113 Phone: (202) 879-3689 Email: dbelott@jonesday.com	<input type="checkbox"/> Legal Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Service/E-Mail <input type="checkbox"/> Hand Deliver

I declare under penalty of perjury under the laws of the state of Texas that the foregoing is true and correct.

DATED at Dallas, Texas, this 16th day of November 2021.

FEARS NACHAWATI PLLC

/s/ Tammy Covert
Tammy Covert
Paralegal

THE HONORABLE ANGELA KAAKE
Trial Date: October 7, 2024

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DALE SMITH,

Plaintiff,

v.

CHEVRON U.S.A., INC., et al.,

Defendants.

NO. 21-2-08160-2 SEA

DECLARATION OF SERVICE

I, Julia Crippen, declare and state as follows:

I am and at all times herein a citizen of the United States, a resident of King County, Washington, and am over the age of 18 years.

On the 22nd day of May, 2024, I caused to be served true and correct copies of the following documents to the counsel listed below:

1. Plaintiff's Third Set of Discovery Directed to Defendant Northwest Wholesale, Inc., *with Accompanying Exhibit*; and

2. Declaration of Service.

<u>CO-COUNSEL FOR PLAINTIFFS</u>	()	Legal Messenger
Gibbs Henderson, TX Bar No. 24041084	()	King County E-Service
<i>Admitted Pro Hac Vice</i>	()	
Charles P. Stern, TX Bar No. 24106466	()	U.S. Mail
<i>Admitted Pro Hac Vice</i>	()	Federal Express

1	NACHAWATI LAW GROUP	(X)	E-Mail
2	5489 Blair Road,		Hand Deliver
3	Dallas, Texas 75231		
4	Phone: (214) 890-0711		
5	Email: ghenderson@ntrial.com		
6	Email: cstern@ntrial.com		
7	Email: ewood@ntrial.com		
8	Email: clopez@ntrial.com		
9	Khaldoun A. Baghdadi, CA Bar No. 190111		
10	<i>Admitted Pro Hac Vice</i>		
11	Michael A. Kelly, CA Bar No. 71460		
12	<i>Admitted Pro Hac Vice</i>		
13	Sara M. Peters, CA Bar No. 260610		
14	<i>Admitted Pro Hac Vice</i>		
15	WALKUP, MELODIA, KELLY & SCHOENBERGER		
16	650 California Street, 26th Floor		
17	San Francisco, CA 94108		
18	Phone: (415) 981-7210		
19	Email: kbaghdadi@walkuplawoffice.com		
20	Email: mkelly@walkuplawoffice.com		
21	Email: speters@walkuplawoffice.com		
22	Email: lmiranda@WalkupLawOffice.com		
23	Email: lconnors@walkuplawoffice.com		
	Email: afreeman@walkuplawoffice.com		
	Peter Flowers, IL Bar No. 06210847		
	<i>Admitted Pro Hac Vice</i>		
	MEYERS & FLOWERS, LLC		
	3 North Second St, Suite 300		
	St. Charles, IL 60174		
	Phone: (630) 232-6333		
	Email: pjf@meyers-flowers.com		
	Robert E. Kennedy, Ohio Bar No. 0006174		
	<i>Admitted Pro Hac Vice</i>		
	David C. Landever, Ohio Bar No. 0065377		
	<i>Admitted Pro Hac Vice</i>		
	WEISMAN KENNEDY & BERRIS CO LPA		
	2900 Detroit Avenue, 2nd Floor		
	Cleveland, OH 44113		
	Phone: (216) 789-2130		
	Phone: (216) 781-1111		
	Email: ekennedy@weismanlaw.com		
	Email: dlandever@weismanlaw.com		
	Email: drozman@weismanlaw.com		

1			
2	<u>COUNSEL FOR CHEVRON U.S.A. INC.</u>	()	Legal Messenger
3	Tyler L. Farmer, WSBA #39912	()	King County E-Service
4	Chelsey L. Mam, WSBA #44609	()	U.S. Mail
5	Elisabeth Read, WSBA #59762	()	Federal Express
6	BRYAN CAVE LEIGHTON PAISNER LLP	(X)	E-Mail
7	999 Third Avenue, Suite 4400, Seattle, WA 98104	()	Hand Deliver
8	Tel: (206) 623-1700; Fax: (206) 623-8717		
9	Email: tyler.farmer@bclplaw.com		
10	Email: chelsey.mam@bclplaw.com		
11	Email: elisabeth.read@bclplaw.com		
12	Email: erin.fujita@bclplaw.com		
13	Jason Levin, WSBA #21964		
14	ALSTON & BIRD LLP		
15	333 South Hope Street, 16th Floor		
16	Los Angeles, CA 90071-1410		
17	Telephone: 213-576-1000		
18	Email: jason.levin@alston.com		
19	Email: dana.camacho@alston.com		
20	Debra Belott, DC Bar #993507		
21	<i>Admitted Pro Hac Vice</i>		
22	JONES DAY		
23	51 Louisiana Ave. N.W.		
24	Washington, DC 20001-2113		
25	Tel: (202) 879-3689		
26	Email: dbelott@jonesday.com		
27	Michael A. Magee, PA #314489		
28	<i>Admitted Pro Hac Vice</i>		
29	JONES DAY		
30	500 Grant Street, Suite 4500		
31	Pittsburgh, Pennsylvania 15219-2514		
32	Phone: 412.394.7296; Fax: 412.394.7959		
33	Email: mmagee@jonesday.com		
34	Leon F. DeJulius Jr., NY Bar No. 5817275		
35	<i>Admitted Pro Hac Vice</i>		
36	Sharyn A. Reisman, NY Bar No. 2889251		
37	<i>Admitted Pro Hac Vice</i>		
38	Melanie K. Chan, NY Bar No. 5746615		
39	<i>Admitted Pro Hac Vice</i>		
40	JONES DAY		
41	250 Vesey Street		

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6 I declare under penalty of perjury under the laws of the state of Washington that the
7 foregoing is true and correct.

8 DATED at Seattle, Washington, this 22nd day of May, 2024.

9 s/ Julia Crippen

10 Julia Crippen

11 Legal Assistant

THE HONORABLE ANGELA KAAKE
Trial Date: February 17, 2025

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DALE SMITH,

Plaintiff,

v.

CHEVRON U.S.A., INC., et al.,

Defendants.

NO. 21-2-08160-2 SEA

DECLARATION OF SERVICE

I, Julia Crippen, declare and state as follows:

I am and at all times herein a citizen of the United States, a resident of King County, Washington, and am over the age of 18 years.

On the 17th day of July, 2024, I caused to be served true and correct copies of the following documents to the counsel listed below:

1. Plaintiff's Expert-Related Interrogatories And Requests For Production To Defendants Chevron U.S.A., Inc. and Northwest Wholesale, Inc.; and

2. Declaration of Service.

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, this 17th day of July, 2024.

s/ Julia Crippen

Julia Crippen
Legal Assistant

THE HONORABLE ANGELA KAAKE
Trial Date: May 5, 2025

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DALE SMITH,

Plaintiff,

v.

CHEVRON U.S.A., INC., et al.,

Defendants.

NO. 21-2-08160-2 SEA

DECLARATION OF SERVICE

I, Dylan J. Johnson, declare and state as follows:

I am and at all times herein a citizen of the United States, a resident of King County, Washington, and am over the age of 18 years.

On the 24th day of October, 2024, I caused to be served true and correct copies of the following documents to the counsel listed below:

1. Plaintiff's Contention Interrogatories to Defendant Northwest Wholesale, Inc.;
- and
2. Declaration of Service.

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, this 24th day of October, 2024.

s/ Dylan J. Johnson

Dylan J. Johnson
 Attorney

EXHIBIT M

Cindy Lopez

Subject: FW: NWW Motion to Continue Trial Date - Smith

From: Charlie Stern

Sent: Thursday, February 20, 2025 9:50 AM

To: poydras.court@kingcounty.gov <Poydras.Court@kingcounty.gov>

Cc: Anne Cohen <acohen@bpmlaw.com>; Gibbs Henderson <ghenderson@ntrial.com>; Khaldoun Baghdadi <kbaghdadi@walkuplawoffice.com>; Peter J. Flowers <pjf@meyers-flowers.com>; alex@weinsteincaggiano.com <alex@weinsteincaggiano.com>

Subject: NWW Motion to Continue Trial Date - Smith

Mr. Dunham:

Please be advised that the claims against Northwest Wholesale are resolved, and, as a result, Northwest Wholesale will be withdrawing its Motion to Continue the Trial Date, thus the motion is moot.

Northwest Wholesale's counsel, cc'd on this email, is traveling abroad. But she has represented to me that a formal pleading striking the motion to continue is forthcoming.

Please pass this message along to the Court and that Northwest Wholesale will shortly be completing the appropriate formal filings.

Thank you and please let me know if you have any questions.

Charlie Stern (Plaintiff's Counsel)

Charlie Stern

Partner

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EXHIBIT N

Cindy Lopez

Subject: FW: Smith v. Chevron U.S.A., Inc., et al. | Cause No. 21-2-08160-2 SEA

From: Court, Poydras <Poydras.Court@kingcounty.gov>

Sent: Thursday, February 20, 2025 11:55 AM

To: Tyler Farmer <Tyler.Farmer@bclplaw.com>

Cc: Charlie Stern <cstern@ntrial.com>; Anne Cohen <acohen@bpmlaw.com>; Cheryl J. Erickson <cerickson@bpmlaw.com>; afreeman@walkuplawoffice.com <afreeman@walkuplawoffice.com>; andrew.decarlow@morganlewis.com <andrew.decarlow@morganlewis.com>; Calfo, Angelo <angelo.calfo@morganlewis.com>; bweidenhammer@kirkland.com <bweidenhammer@kirkland.com>; cassandra.catalano@kirkland.com <cassandra.catalano@kirkland.com>; Chelsey Mam <Chelsey.Mam@bclplaw.com>; Cindy Lopez <clopez@ntrial.com>; dana.camacho@alston.com <dana.camacho@alston.com>; dbelott@jonesday.com <dbelott@jonesday.com>; dlandever@weismanlaw.com <dlandever@weismanlaw.com>; dleneck@jonesday.com <dleneck@jonesday.com>; drozman@weismanlaw.com <drozman@weismanlaw.com>; ekennedy@weismanlaw.com <ekennedy@weismanlaw.com>; Elisabeth Read <Elisabeth.Read@bclplaw.com>; Erin Fujita <erin.fujita@bclplaw.com>; Erin Wood <ewood@ntrial.com>; Gibbs Henderson <ghenderson@ntrial.com>; jason.levin@alston.com <jason.levin@alston.com>; john.patrick.bailey@gmail.com <john.patrick.bailey@gmail.com>; kate@dadkp.com <kate@dadkp.com>; kbaghdadi@walkuplawoffice.com <kbaghdadi@walkuplawoffice.com>; Kellie McDonald <Kellie.McDonald@bclplaw.com>; klahaszow@jonesday.com <klahaszow@jonesday.com>; lconnors@walkuplawoffice.com <lconnors@walkuplawoffice.com>; lfdejulius@jonesday.com <lfdejulius@jonesday.com>; lixi.colmenero@morganlewis.com <lixi.colmenero@morganlewis.com>; lmiranda@walkuplawoffice.com <lmiranda@walkuplawoffice.com>; lsmith@kirkland.com <lsmith@kirkland.com>; mari@fhbzlaw.com <mari@fhbzlaw.com>; melaniechan@jonesday.com <melaniechan@jonesday.com>; mgosling@jonesday.com <mgosling@jonesday.com>; mkelley@walkuplawoffice.com <mkelley@walkuplawoffice.com>; mmagee@jonesday.com <mmagee@jonesday.com>; pjf@meyers-flowers.com <pjf@meyers-flowers.com>; ragan.naresh@kirkland.com <ragan.naresh@kirkland.com>; sdoles@levinlaw.com <sdoles@levinlaw.com>; sareisman@jonesday.com <sareisman@jonesday.com>; service@weinsteincaggiano.com <service@weinsteincaggiano.com>; speters@walkuplawoffice.com <speters@walkuplawoffice.com>; Tammy Covert <tcovert@ntrial.com>; tom@dadkp.com <tom@dadkp.com>; trang.la@morganlewis.com <trang.la@morganlewis.com>; wcarrson@fnlawfirm.com <wcarrson@fnlawfirm.com>; thomas.leahy@kirkland.com <thomas.leahy@kirkland.com>; fvc@meyers-flowers.com <fvc@meyers-flowers.com>; awoods@levinlaw.com <awoods@levinlaw.com>

Subject: RE: Smith v. Chevron U.S.A., Inc., et al. | Cause No. 21-2-08160-2 SEA

This message originated from outside your organization

Good Morning,

Counsel, I am emailing you on behalf of Judge Poydras with regards to the pending motion to continue that is before this Court. The Judge wanted me to let the parties know that, after review of the pleadings, he intends to grant the motion. However, he understands that Counsel are very busy with litigation elsewhere across the country and that your availabilities may vary wildly, so he has not yet decided on a date of continuance.

Accordingly, the Court asks the parties to discuss their schedules amongst themselves and provide the Court with 2 or 3 windows of mutual availability that the Court can then use to determine a date of continuance that the Court can schedule around.

If the parties could do this at their soonest opportunity, it would be greatly appreciated, particularly since we have other pending motions in the case and would like to resolve this matter as swiftly as possible.

Please let me know if you have any questions.

Regards,

Alec Unis
Bailiff Covering for Judge Jason Poydras
King County Superior Court
Mailing Address: 513 3rd Ave, Rm C-203 | Seattle, WA 98104
Courtroom W-719
PH: 206.477.1435
EMAIL: Poydras.court@kingcounty.gov

Judge Poydras is currently in the process of recruiting a new bailiff. To contact the Court, email poydras.court@kingcounty.gov and your message will reach the Court's coverage bailiff. Please anticipate potential delayed responses during the recruitment process. Thank you in advance for patience with any delays.

If an attorney is communicating substantive information to court staff, the e-mail must also be sent to opposing counsel and so indicate on its face. Substantive information includes information regarding the likelihood of settlement, the timing of witnesses, anticipated problems with scheduling, concerns regarding security and other case-specific issues.

From: Court, Poydras <Poydras.Court@kingcounty.gov>
Sent: Tuesday, February 18, 2025 2:38 PM
To: Tyler Farmer <Tyler.Farmer@bclplaw.com>
Cc: Charlie Stern <csstern@ntrial.com>; Anne Cohen <acohen@bpmlaw.com>; Cheryl J. Erickson <cerickson@bpmlaw.com>; afreeman@walkuplawoffice.com; andrew.decarlow@morganlewis.com; Calfo, Angelo <angelo.calfo@morganlewis.com>; bweidenhammer@kirkland.com; cassandra.catalano@kirkland.com; Chelsey Mam <Chelsey.Mam@bclplaw.com>; Cindy Lopez <clopez@ntrial.com>; dana.camacho@alston.com; dbelott@jonesday.com; dlandever@weismanlaw.com; dleneck@jonesday.com; drozman@weismanlaw.com; ekennedy@weismanlaw.com; Elisabeth Read <Elisabeth.Read@bclplaw.com>; Erin Fujita <erin.fujita@bclplaw.com>; Erin Wood <ewood@ntrial.com>; Henderson Gibbs <ghenderson@ntrial.com>; jason.levin@alston.com; john.patrick.bailey@gmail.com; kate@dadkp.com; kbaghdadi@walkuplawoffice.com; Kellie McDonald <Kellie.McDonald@bclplaw.com>; klahaszow@jonesday.com; lconnors@walkuplawoffice.com; lfdejulius@jonesday.com; lixi.colmenero@morganlewis.com; lmiranda@walkuplawoffice.com; lsmith@kirkland.com; mari@fjbzlaw.com; melaniechan@jonesday.com; mgosling@jonesday.com; mkelly@walkuplawoffice.com; mmagee@jonesday.com; pjf@meyers-flowers.com; ragan.naresh@kirkland.com; sdoles@levinlaw.com; sareisman@jonesday.com; service@weinsteincaggiano.com; speters@walkuplawoffice.com; Tammy Covert <tcovert@ntrial.com>; tom@dadkp.com; trang.la@morganlewis.com; wcarson@fnlawfirm.com; thomas.leahy@kirkland.com; fvc@meyers-flowers.com; awoods@levinlaw.com
Subject: RE: Smith v. Chevron U.S.A., Inc., et al. | Cause No. 21-2-08160-2 SEA

Good afternoon,

Please see attached signed order.

Thank you,

EXHIBIT O

Cindy Lopez

Subject: FW: Smith v. Chevron U.S.A., Inc., et al. | Cause No. 21-2-08160-2 SEA
Attachments: Re: are we meeting on Smith today? the Zoom link fell off my calendar if so

From: Charlie Stern <cstern@ntrial.com>
Sent: Thursday, February 20, 2025 12:15 PM
To: Court, Poydras <Poydras.Court@kingcounty.gov>
Cc: alex@weinsteincaggiano.com <alex@weinsteincaggiano.com>; Anne Cohen <acohen@bpmlaw.com>
Subject: Re: Smith v. Chevron U.S.A., Inc., et al. | Cause No. 21-2-08160-2 SEA

In response to the email below, Plaintiff's counsel wants to make sure the Court is fully apprised of the situation.

Northwest Wholesale's counsel is CC'd. Northwest Wholesale is the Defendant who filed the Motion to Continue, which was joined by no other parties and opposed by Plaintiff.

As I mentioned in the email attached, Plaintiff and NWW have resolved. The NWW Motion to Continue, referenced below, is moot. This was the Motion to Continue that I was referring to in my emails attached with Court today.

I want to be sure Judge Poydras is aware of the situation and that Northwest Wholesale is no longer in the case and the motion to continue is moot.

Thank you.

From: Court, Poydras <Poydras.Court@kingcounty.gov>
Sent: Thursday, February 20, 2025 11:55 AM
To: Tyler Farmer <Tyler.Farmer@bclplaw.com>
Cc: Charlie Stern <cstern@ntrial.com>; Anne Cohen <acohen@bpmlaw.com>; Cheryl J. Erickson <cerickson@bpmlaw.com>; afreeman@walkuplawoffice.com <afreeman@walkuplawoffice.com>; andrew.decarlow@morganlewis.com <andrew.decarlow@morganlewis.com>; Calfo, Angelo <angelo.calfo@morganlewis.com>; bweidenhammer@kirkland.com <bweidenhammer@kirkland.com>; cassandra.catalano@kirkland.com <cassandra.catalano@kirkland.com>; Chelsey Mam <Chelsey.Mam@bclplaw.com>; Cindy Lopez <clopez@ntrial.com>; dana.camacho@alston.com <dana.camacho@alston.com>; dbelott@jonesday.com <dbelott@jonesday.com>; dlandever@weismanlaw.com <dlandever@weismanlaw.com>; dleneck@jonesday.com <dleneck@jonesday.com>; drozman@weismanlaw.com <drozman@weismanlaw.com>; ekennedy@weismanlaw.com <ekennedy@weismanlaw.com>; Elisabeth Read <Elisabeth.Read@bclplaw.com>; Erin Fujita <erin.fujita@bclplaw.com>; Erin Wood <ewood@ntrial.com>; Gibbs Henderson <ghenderson@ntrial.com>; jason.levin@alston.com <jason.levin@alston.com>; john.patrick.bailey@gmail.com <john.patrick.bailey@gmail.com>; kate@dadkp.com <kate@dadkp.com>; kbaghdadi@walkuplawoffice.com <kbaghdadi@walkuplawoffice.com>; Kellie McDonald <Kellie.McDonald@bclplaw.com>; klahaszow@jonesday.com <klahaszow@jonesday.com>; lconnors@walkuplawoffice.com <lconnors@walkuplawoffice.com>; lfdejulius@jonesday.com <lfdejulius@jonesday.com>; lixi.colmenero@morganlewis.com <lixi.colmenero@morganlewis.com>; lmiranda@walkuplawoffice.com <lmiranda@walkuplawoffice.com>; lsmith@kirkland.com <lsmith@kirkland.com>; mari@fhbzlaw.com <mari@fhbzlaw.com>; melaniechan@jonesday.com <melaniechan@jonesday.com>; mgosling@jonesday.com <mgosling@jonesday.com>; mkelley@walkuplawoffice.com <mkelley@walkuplawoffice.com>; mmagee@jonesday.com <mmagee@jonesday.com>; pjf@meyers-flowers.com <pjf@meyers-flowers.com>;

ragan.naresh@kirkland.com <ragan.naresh@kirkland.com>; sdoles@levinlaw.com <sdoles@levinlaw.com>; sareisman@jonesday.com <sareisman@jonesday.com>; service@weinsteincaggiano.com <service@weinsteincaggiano.com>; speters@walkuplawoffice.com <speters@walkuplawoffice.com>; Tammy Covert <tcovert@ntrial.com>; tom@dadkp.com <tom@dadkp.com>; trang.la@morganlewis.com <trang.la@morganlewis.com>; wcarson@fnlawfirm.com <wcarson@fnlawfirm.com>; thomas.leahy@kirkland.com <thomas.leahy@kirkland.com>; fvc@meyers-flowers.com <fvc@meyers-flowers.com>; awoods@levinlaw.com <awoods@levinlaw.com>

Subject: RE: Smith v. Chevron U.S.A., Inc., et al. | Cause No. 21-2-08160-2 SEA

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Please let me know if you have any questions.

Regards,

Alec Unis
Bailiff Covering for Judge Jason Poydras
King County Superior Court
Mailing Address: 513 3rd Ave, Rm C-203 | Seattle, WA 98104
Courtroom W-719
PH: 206.477.1435
EMAIL: Poydras.court@kingcounty.gov

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From: Court, Poydras <Poydras.Court@kingcounty.gov>

Sent: Tuesday, February 18, 2025 2:38 PM

EXHIBIT P

Cindy Lopez

Subject: FW: Smith v. Chevron U.S.A., Inc., et al. | Cause No. 21-2-08160-2 SEA

From: Court, Poydras <Poydras.Court@kingcounty.gov>

Sent: Thursday, February 20, 2025 12:43 PM

To: Tyler Farmer <Tyler.Farmer@bclplaw.com>

Cc: Charlie Stern <cstern@ntrial.com>; Anne Cohen <acohen@bpmlaw.com>; Cheryl J. Erickson <cerickson@bpmlaw.com>; afreeman@walkuplawoffice.com <afreeman@walkuplawoffice.com>; andrew.decarlow@morganlewis.com <andrew.decarlow@morganlewis.com>; Calfo, Angelo <angelo.calfo@morganlewis.com>; bweidenhammer@kirkland.com <bweidenhammer@kirkland.com>; cassandra.catalano@kirkland.com <cassandra.catalano@kirkland.com>; Chelsey Mam <Chelsey.Mam@bclplaw.com>; Cindy Lopez <clopez@ntrial.com>; dana.camacho@alston.com <dana.camacho@alston.com>; dbelott@jonesday.com <dbelott@jonesday.com>; dlandever@weismanlaw.com <dlandever@weismanlaw.com>; dleneck@jonesday.com <dleneck@jonesday.com>; drozman@weismanlaw.com <drozman@weismanlaw.com>; ekennedy@weismanlaw.com <ekennedy@weismanlaw.com>; Elisabeth Read <Elisabeth.Read@bclplaw.com>; Erin Fujita <erin.fujita@bclplaw.com>; Erin Wood <ewood@ntrial.com>; Gibbs Henderson <ghenderson@ntrial.com>; jason.levin@alston.com <jason.levin@alston.com>; john.patrick.bailey@gmail.com <john.patrick.bailey@gmail.com>; kate@dadkp.com <kate@dadkp.com>; kbaghdadi@walkuplawoffice.com <kbaghdadi@walkuplawoffice.com>; Kellie McDonald <Kellie.McDonald@bclplaw.com>; klahaszow@jonesday.com <klahaszow@jonesday.com>; lconnors@walkuplawoffice.com <lconnors@walkuplawoffice.com>; lfdejulius@jonesday.com <lfdejulius@jonesday.com>; lixi.colmenero@morganlewis.com <lixi.colmenero@morganlewis.com>; lmiranda@walkuplawoffice.com <lmiranda@walkuplawoffice.com>; lsmith@kirkland.com <lsmith@kirkland.com>; mari@fhbzlaw.com <mari@fhbzlaw.com>; melaniechan@jonesday.com <melaniechan@jonesday.com>; mgosling@jonesday.com <mgosling@jonesday.com>; mkelley@walkuplawoffice.com <mkelley@walkuplawoffice.com>; mmagee@jonesday.com <mmagee@jonesday.com>; pjf@meyers-flowers.com <pjf@meyers-flowers.com>; ragan.naresh@kirkland.com <ragan.naresh@kirkland.com>; sdoles@levinlaw.com <sdoles@levinlaw.com>; sareisman@jonesday.com <sareisman@jonesday.com>; service@weinsteincaggiano.com <service@weinsteincaggiano.com>; speters@walkuplawoffice.com <speters@walkuplawoffice.com>; Tammy Covert <tcovert@ntrial.com>; tom@dadkp.com <tom@dadkp.com>; trang.la@morganlewis.com <trang.la@morganlewis.com>; wcarrson@fnlawfirm.com <wcarrson@fnlawfirm.com>; thomas.leahy@kirkland.com <thomas.leahy@kirkland.com>; fvc@meyers-flowers.com <fvc@meyers-flowers.com>; awoods@levinlaw.com <awoods@levinlaw.com>

Subject: RE: Smith v. Chevron U.S.A., Inc., et al. | Cause No. 21-2-08160-2 SEA

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Good Morning,

As Counsel has pointed out to the Court, the moving party for the motion to continue, NW Wholesalers, has settled their dispute with the plaintiff in this case. As a result, please disregard the previous email with the Court's instructions. I have discussed this matter with Judge Poydras and he agrees that the motion will be moot as soon as the notice of settlement is filed, and a copy sent to our court for confirmation. He will hold off on issuing his decision in the meantime, but if you could file that document and send a copy at your earliest convenience, then I can formally strike the hearing from our calendar and remove the pleadings from our pending work queue.

However, and for clarity of the record, the Court requests that the notice of settlement specifically include language stating that the pending motion to continue (and any other pending motions exclusively between these two parties I may be unaware of) is/are to be stricken or considered moot and will not be considered by the Court.

Regards,

Alec Unis

Bailiff Covering for Judge Jason Poydras
King County Superior Court
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Courtroom W-719
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Importance: High

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Subject: RE: Smith v. Chevron U.S.A., Inc., et al. | Cause No. 21-2-08160-2 SEA

EXHIBIT Q

Cindy Lopez

Subject: FW: SETTLEMENT AGREEMENT.docx (002)

From: Charlie Stern <cstern@ntrial.com>

Sent: Monday, March 3, 2025 11:47 AM

To: Anne Cohen <acohen@bpmlaw.com>

Cc: Alexandra Caggiano <alex@weinsteincaggiano.com>; Cheryl J. Erickson <cerickson@bpmlaw.com>

Subject: Re: SETTLEMENT AGREEMENT.docx (002)

Thanks, Anne. I will take a look and get back to you this week hopefully.

From: Anne Cohen <acohen@bpmlaw.com>

Sent: Monday, March 3, 2025 11:08 AM

To: Charlie Stern <cstern@ntrial.com>

Cc: Alexandra Caggiano <alex@weinsteincaggiano.com>; Cheryl J. Erickson <cerickson@bpmlaw.com>

Subject: SETTLEMENT AGREEMENT.docx (002)

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

This message originated from outside your organization

Hi Charles and Alex,

Attached is a draft of proposed settlement language for the formal agreement. I'm sending it to you in word so you can redline proposed changes and fill in payment information. My process is to get final approval once we are in agreement as to the proposed language.

Thanks in advance.

Sincerely,

Anne Cohen

Managing Shareholder

Admitted in Oregon, Washington and Utah

Betts, Patterson & Mines, P.S.

US Bancorp Tower

111 SW 5th Avenue, Suite 3650

Portland, OR 97204

D 503.961.6540 | F 503.961.6339

RATED BY

Super Lawyers®

Anne Cohen

5 YEARS



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EXHIBIT R

Cindy Lopez

Subject: FW: SETTLEMENT AGREEMENT.docx (002)

From: Anne Cohen <acohen@bpmlaw.com>

Sent: Wednesday, March 5, 2025 9:13 AM

To: Charlie Stern <cstern@ntrial.com>

Cc: Alexandra Caggiano <alex@weinsteincaggiano.com>; Cheryl J. Erickson <cerickson@bpmlaw.com>

Subject: RE: SETTLEMENT AGREEMENT.docx (002)

This message originated from outside your organization

Hello all,

My folks are asking for a medicare addendum to the settlement agreement. I'll send it to you shortly.

Sincerely,

Anne Cohen

Managing Shareholder

Admitted in Oregon, Washington and Utah

Betts, Patterson & Mines, P.S.

US Bancorp Tower

111 SW 5th Avenue, Suite 3650

Portland, OR 97204

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From: Anne Cohen

Sent: Monday, March 3, 2025 9:09 AM

To: Charles P. Stern <cstern@ntrial.com>

Cc: Alexandra Caggiano <alex@weinsteincaggiano.com>; Cheryl J. Erickson <cerickson@bpmlaw.com>

Subject: SETTLEMENT AGREEMENT.docx (002)

Hi Charles and Alex,

Attached is a draft of proposed settlement language for the formal agreement. I'm sending it to you in word so you can redline proposed changes and fill in payment information. My process is to get final approval once we are in agreement as to the proposed language.

Thanks in advance.

Sincerely,

Anne Cohen

Managing Shareholder

Admitted in Oregon, Washington and Utah

Betts, Patterson & Mines, P.S.

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EXHIBIT S

THE HONORABLE JASON POYDRAS

Trial Date: May 5, 2025

Hearing Date: March 21, 2025

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DALE SMITH,

Plaintiff,

v.

CHEVRON U.S.A., INC.;
NORTHWEST WHOLESALE, INC.; and
SYNGENTA CROP PROTECTION, LLC;

Defendants.

NO. 21-2-08160-2 SEA

PLAINTIFF'S RESPONSE TO
DEFENDANT NORTHWEST
WHOLESALE, INC.'S MOTION
FOR SUMMARY JUDGMENT

COMES NOW Plaintiff, DALE SMITH (hereinafter, "Mr. Smith" or "Plaintiff"), by and through his counsel of record, and files this Response to Defendant Northwest Wholesale, Inc.'s (hereinafter, "Defendant" or "NWW") Motion for Summary Judgment (Motion), and in support thereof states as follows:

I. RELIEF REQUESTED

NWW's scattershot Motion ignores the factual record and misunderstands (or misrepresents) the applicable Washington law. First, it is undeniable that Mr. Smith identified NWW as the supplier and seller of paraquat that he used in the 1970s. NWW's refusal to acknowledge this evidence does not mean that the evidence does not exist. *See* Def.'s Mot. at 4-5. Second, the WPLA does not apply to these claims, so NWW's status as a seller/supplier of

1 paraquat does not relieve it of liability. *See* Def.’s Mot. at 6. As for NWW’s “proximate causation”
2 arguments, NWW has not met its substantial burden to demonstrate the absence of an issue of
3 material fact. *See* Def.’s Mot. at 7-9. And there is ample evidence that paraquat proximately
4 caused Mr. Smith’s Parkinson’s Disease.

5 When the Court views all facts and inferences in favor of Plaintiff, as it must, it is readily
6 apparent that abundant factual issues remain to be determined by the jury in this case. This Motion
7 should be denied.

8 **II. STATEMENT OF FACTS**

9 **A. Plaintiff’s Claims**

10 Plaintiff’s First Amended Complaint includes claims of liability based on theories of
11 “common law negligence, strict product liability, negligence, and breach of express and implied
12 warranties under the Washington Product Liability Act (WPLA), RCW 7.72 et seq.; strict product
13 liability under Section 402A and 402B of the Restatement of Torts; [and] conspiracy[.]” *See* First
14 Am. Compl. at ¶ 104.

15 **B. Background**

16 Mr. Smith was born in 1961. *See Exhibit 1*, Smith Preservation Dep. Tr. Vol. 1, dated
17 May 16, 2024 (“Smith Preservation Dep. Tr. Vol. 1”) at 6:25-7:1. He was diagnosed with
18 Parkinson’s Disease around 1996 at the age of 35. *Id.* at 61:11. Currently, Mr. Smith resides in a
19 full-time assisted living facility, is confined to a wheelchair and requires 24-hour observation and
20 care by health professionals. *Id.* at page 7:17-25.

21 Mr. Smith detailed his work with and around paraquat at various apple orchards and
22 worksites in and around Oroville, Washington. *Id.* at pages 23-61. Paraquat has been utilized
23 since the 1960s in the United States by professional agriculturalist as a spray chemical herbicide,

1 and it has been ubiquitous in the apple growing industry since that time. *See Exhibit 2*,
 2 Defendants' Expert Kassim Al-Khatib, Ph.D. Dep. Tr., dated Sept. 30, 2024, at pages 63:13-16
 3 and 90:13-21.

4 **C. Gordon Roberts Orchard's Paraquat was Supplied by NWW**

5 **1. Mr. Smith's testimony.**

6 Mr. Smith first sprayed paraquat in 1977 at Gordon Roberts Orchard ("GRO"). Ex. 1,
 7 Smith Preservation Dep. Tr. Vol. 1 at 23:20-24:1. He sprayed again at GRO in 1978. *Id.* at 37:25-
 8 38:2. Mr. Smith rode with his dad in 1977 to pick up paraquat from NWW in Oroville. *Id.* at
 9 24:24-25:15. Mr. Smith recalled his father picking up a 2.5-gallon plastic jug of paraquat from
 10 NWW. Ex. 1, Smith Preservation Dep. Tr. at 25:16-25. Mr. Smith described this incident
 11 involving NWW in detail and specifically identified NWW as the seller/supplier of the paraquat
 12 he used at GRO in 1977. *Id.* at 24:24-25:15.

13 Mr. Smith recalls that when he went to pick up paraquat at NWW "it said paraquat on the
 14 box that it came in." *See Exhibit 3*, Smith Preservation Dep. Tr. Vol. 2, dated May 17, 2024
 15 ("Smith Preservation Dep. Tr. Vol. 2") at 49:24. He rode with his dad "quite often" to NWW to
 16 pick up "paraquat and other pesticides." *Id.* at 50:5-9. During the following year, 1978, NWW
 17 also supplied the paraquat that Mr. Smith applied at GRO. Ex. 1, Smith Preservation Dep. Tr. at
 18 38:12-14.

19 **2. Additional Orchard Workers Confirm that spray chemicals, including**
 20 **Paraquat, were purchased from NWW during the 1970s and 1980s**

21 Bill Frazier ("Mr. B. Frazier"), Mr. Smith's cousin, was born in 1960 and began working
 22 at GRO around 1976 when he was 16 years old. *See Exhibit 4*, Dep. Tr. of Bill Frazier, dated
 23 May 30, 2024 ("Dep. Tr. of Bill Frazier"), at pages 8:20-21 and 19:21-20:1. Mr. B. Frazier worked
 at GRO from 1976 through approximately 1978, which is the same time that Mr. Smith sprayed

1 paraquat at the orchard. *Id.* at 22:14-23:3; 24:13-25; 37:3-24. Mr. B. Frazier worked in the same
2 orchard as Mr. Smith and observed him working during those years. *Id.* at 46:7-14. Based on his
3 experience as apple orchard manager and observation of weeds and grass being killed along apple
4 tree rows after seeing herbicide spraying, Mr. B. Frazier knows that paraquat was used at the GRO
5 when he worked there. *Id.* at 91:8-92:7.

6 During Mr. B. Frazier's deposition, he was asked repeatedly about his knowledge of Mr.
7 Smith's use of paraquat. In the context of those questions, he confirmed that GRO procured its
8 "chemicals" at NWW, and he went there to pick them up:

9 Q. So you don't know -- well, do you know where they got the chemicals that
10 they used?

11 A. Yeah. Northwest Wholesale.

12 Q. Northwest Wholesale. How do you know that it was from Northwest
13 Wholesale?

14 A. Because that's where I've been with Uncle Dale. My Uncle Dale, I've rode
15 with him in the truck down there to pick up chemicals before.

16 Q. And you're familiar with Northwest Wholesale?

17 A. Oh, yeah.

18 *Id.* at 105:20-106:5.

19 Mr. B. Frazier remembered other chemical distributors in the area, but he could not testify
20 that GRO ever bought chemicals from those other distributors and only recalled NWW because he
21 physically visited NWW with other workers to get "whatever" the orchard needed. *Id.* at 106:15-
22 21.

23 Mr. Patrick Frazier ("Mr. P. Frazier"), Mr. B. Frazier's brother and another of Mr. Smith's
cousins, briefly worked at the GRO for one summer in 1980. *See Exhibit 5*, Dep. Tr. of Patrick
Frazier, dated May 13, 2024 ("Dep. Tr. of Patrick Frazier") at page 37:13-17. Despite his very

1 brief tenure at GRO, Mr. P. Frazier recalls that NWW was “the largest distributor in the valley
2 there, and they had these fieldmen that they would send out to talk to the orchardists about
3 recommendations for what chemicals to use for what.” *Id.* at 151:21-25.

4 One other orchard worker, Leroy Hirst (“Mr. Hirst”), was deposed in this matter. Mr. Hirst
5 is not related to Mr. Smith and has not spoken to him in close to 40 years, but Mr. Hirst worked
6 on another orchard, the EMA orchard, in the mid-1980s with Mr. Smith. *See Exhibit 6*, Dep. Tr.
7 of Leroy Hirst, dated July 12, 2024 (“Dep. Tr. of Hirst”) at 26:6-21. He testified that paraquat was
8 purchased and utilized at the EMA orchard. *Id.* at 88:19-89:6. Mr. Hirst testified that the paraquat
9 used at EMA during the early to mid-1980s came from two supply houses—Chamberlains and
10 NWW—meaning that NWW was selling paraquat during that time period as well. *Id.* at 52:5-22.

11 **D. Mr. Smith’s GRO Paraquat Usage and Exposure**

12 **1. Timing and manner of Mr. Smith’s exposure, mixing, loading and** 13 **application of paraquat.**

14 Beginning in approximately 1973, Mr. Smith and his family lived on the GRO, where his
15 father worked as a foreman. Ex. 1, Smith Preservation Dep. Tr. Vol. 1 at 17:24-18:6. During
16 those early years, the spouse of the orchard owner used paraquat for weed control. *Id.* at 40:4-21.
17 Mr. Smith recalled that he was present when Gordon Robert’s wife was applying “often” and
18 would approach her when she was spraying occasionally. *Id.* at 40:22-41:13.

19 When he turned 16, Mr. Smith began mowing and weed killing from the two tractors at the
20 orchard. *Id.* at 21:24-22:16. He killed via tractor by pulling a tank filled with paraquat and water.
21 *Id.* at 23:7-15. According to Mr. Smith, the paraquat mixture he sprayed “killed everything.” *Id.*
22 at 23:17.

23 Mr. Smith first sprayed paraquat in late May and June of 1977. Ex. 1, Smith Preservation
Dep. Tr. Vol. 1 at 23:20-24:1. The paraquat Mr. Smith used at the GRO was stored in a shed. *Id.*

1 at 24:9-17. Mr. Smith recalled that the paraquat stored in the shed was contained in a plastic 2.5-
2 gallon tank that said “Ortho Chevron” on it and was emblazoned with a skull and crossbones. *Id.*
3 at 24:18-23. Mr. Smith poured paraquat in a tank and then mixed it with water coming forcefully
4 from an irrigation filling pipe. *Id.* at 26:18-27:6. This mixing process took two to five minutes and
5 occasionally resulted in the paraquat mixture splashing and getting on Mr. Smith’s skin. *Id.* at
6 27:7-13.

7 Mr. Smtih pulled the tank containing the paraquat mixture from an open cab Massey
8 Ferguson tractor with a seat about 3 to 4 feet off the ground. Ex. 1, Smith Preservation Dep. Tr.
9 Vol. 1 at 27:22-28:11. The paraquat was sprayed from a five-nozzle boom extending out of the
10 right side of the tank. *Id.* at 28:19-29:5. The boom’s spray nozzles, which were roughly the size
11 of the tip of a pencil, would occasionally get clogged. *Id.* at 29:6-12. When clogging occurred,
12 Mr. Smith would usually remove his gloves and rub the nozzle filter with his bare hands, which
13 resulted in spray mixture getting on his fingers. *Id.* at 29:20-30:11. Mr. Smith would have to clean
14 the nozzles in this manner “[e]very 20, 30 minutes” at all the orchards comprising the GRO. *Id.*
15 at 30:9-17. Mr. Smith described the spray mist that came out of the boom nozzles, and the manner
16 in which it got on his skin. *Id.* at 31:8-19.

17 **2. Frequency and duration of Mr. Smith’s exposures to paraquat.**

18 Mr. Smith sprayed all 5 of the orchards comprising the GRO. Ex. 1, Smith Preservation
19 Dep. Tr. Vol. 1 at 31:20-32:8. Mr. Smith estimated that the smallest of those orchards, Day Place,
20 took approximately 8 hours to spray, which he would do over 2 days, and required 4 tanks of
21 paraquat mixture, all of which he would mix. *Id.* at 32:9-17, 33:15-21. These orchards were all
22 arranged in rows, and each row required 2 passes to cover the trees on both sides. *Id.* at 32:18-25.
23 When Mr. Smith turned the corner into a new row, he would encounter spray mist from the row

1 he had just sprayed. *Id.* at 33:1-3. Mr. Smith testified that spray mist got on him “every day [he]
2 sprayed” at GRO. *Id.* at 33:12-14.

3 Mr. Smith estimated that he spent “around 20” days total spraying paraquat in the spring
4 of 1977 at Gordon Roberts Orchard and an additional 10 hours in the fall before harvest. Ex. 1,
5 Smith Preservation Dep. Tr. Vol. 1 at 33:22-34:13. Mr. Smith sprayed paraquat in essentially the
6 same manner and for “probably 20 days, a month” in May and June of 1978 at GRO. *Id.* at 36:24-
7 37:2. As was the case in 1977, Mr. Smith repeatedly got paraquat on his skin in 1978 every time
8 he: (1) turned into a row adjacent to one he just sprayed; and (2) cleaned clogged boom nozzles
9 with his bare hands. *Id.* at 37:14-38:8.

10 **3. Mr. Smith’s NWW-supplied paraquat usage proximately caused his**
11 **Parkinson’s disease.**

12 Plaintiff’s expert, Dr. Anthony Lang (“Dr. Lang”), is a neurologist and world-renowned
13 expert in movement disorders, including Parkinson’s disease. Dr. Lang was asked to “provide an
14 opinion on the likelihood that [Mr. Smith’s] use of paraquat was a substantial factor in causing his
15 Parkinson’s disease.” See **Exhibit 7**, Declaration of Anthony Lang, OC, MD, FRCP, FAAN,
16 FCAHS, FRSC, dated August 19, 2024 (“Lang Decl.”), at page 1. Relying on several paraquat-
17 Parkinson’s Disease epidemiological studies (Hertzman 1994, Liou 1997, Dhillon 2008, Tanner
18 2009, Firestone 2010, Tanner 2011), Dr. Lang opined that if Mr. Smith used paraquat for at least
19 25 days, paraquat caused his Parkinson’s Disease. *Id.* at 3.

20 Importantly, Mr. Smith experienced far more than 25 days of exposure to NWW’s paraquat
21 at GRO. First, all the paraquat at GRO came from NWW. See § II.C. Mr. Smith estimated that
22 he spent “around 20” days spraying paraquat in the spring of 1977 at GRO and an additional 10
23 hours in the fall before harvest. Ex. 1, Smith Preservation Dep. Tr. Vol. 1 at 33:22-34:13.
Similarly, Mr. Smith sprayed paraquat “probably 20 days, a month” in May and June of 1978 at

1 GRO. *Id.* at 36:24-37:4. In both 1977 and 1978, Mr. Smith repeatedly got paraquat on his skin
 2 every time he: (1) turned into a row adjacent to one he just sprayed; and (2) cleaned clogged boom
 3 nozzles with his bare hands. *Id.* at 37:11-38:8.

4 Mr. Smith lived on the GRO beginning in 1973, and his combined 40-60+ days of spraying
 5 at GRO in 1977 and 1978 is a conservative estimate of exposure because it does not include the
 6 additional bystander exposure that he experienced when he was on the orchard and in the proximity
 7 of other people spraying paraquat. *See Exhibit 8*, Smith Discovery Dep. Tr., dated December 18-
 8 20, 2023 and February 5-8, 2024 (“Smith Disco. Dep. Tr.”), at 102-108, 397-398, 470-71. In any
 9 event, his 40-60+ days of exposure to NWW’s paraquat from personal spraying, cleaning and
 10 mixing paraquat more than meet Dr. Lang’s causation criteria. *See Ex. 7*, Lang Decl. at page 3.

11 **E. NWW’s Corporate Representative confirmed that (1) NWW currently sells**
 12 **Paraquat; (2) NWW began selling chemicals for the apple growing industry in**
 13 **the 1940s; and (3) he could not state that did not sell Paraquat in the 1970s or**
 14 **1980s.**

15 NWW’s CEO and President, Mr. Rodney Van Orman (“Mr. Van Orman”), is NWW’s
 16 designated 30(b)(6) witness and was deposed in this matter. *See Exhibit 9*, Dep. Tr. of Rodney
 17 Van Orman, dated September 25, 2024 (“Van Orman Dep. Tr.”) at pages 8:23-9:2 and 9:10-20.
 18 Mr. Van Orman confirmed that NWW has sold spray chemicals, including herbicides, utilized in
 19 the apple growing industry since 1937. *Id.* at page 45:15-18. Mr. Van Orman further confirmed
 20 that NWW currently sells paraquat products. *Id.* at page 51:14-21.

21 Despite (1) Mr. Smith and Mr. Hirst identifying NWW as a paraquat seller in the 1970s
 22 and 1980s, (2) Mr. P Frazier and Mr. B. Frazier identifying NWW as a seller of chemicals during
 23 that time, (3) NWW selling spray herbicides in the area since 1937, and (4) NWW currently selling
 paraquat, NWW has taken the position in this case that it does not know whether it sold paraquat

1 during the 1970s or 1980s. *See* Def.’s Mot. at 1 (“there is no evidence that NWW was a product
2 seller of paraquat during the relevant exposure period from 1973-1983.”).

3 In its original discovery responses, when asked if NWW sold or supplied paraquat in the
4 1970s and 1980s, NWW responded that “defendant has made a reasonable inquiry and information
5 known or readily attainable is **insufficient to enable the defendant to admit or deny that it sold**
6 **paraquat and/or paraquat-containing products between 1961 and 1985**, as there was a fire in
7 June of 2015 that destroyed most of the company’s records prior to that time period.” Ex. 9, Van
8 Orman Dep. Tr. at pages 55:16-57:7 (emphasis added). As this case progressed, NWW changed
9 its response to similarly worded discovery and now denies selling paraquat during the relevant
10 time period, stating “Northwest Wholesale does not know whether it sold paraquat products;
11 **therefore, denies this request.**” *Id.* 66:5-67:23 (emphasis added). Mr. Van Orman admitted that
12 this change from being unable to admit or deny to “denies” was based on “no new information,
13 [nor] additional information.” *Id.* at 67:12-23. Despite the new baseless and unsupported denial
14 in the discovery responses, Mr. Van Orman admitted that he cannot testify that NWW did not sell
15 paraquat in the 1970s and 1980s. *Id.* at 67:25-68:2 and 243:14-23 (“I cannot say no, that we didn’t
16 sell it.”).¹

17 In fact, the only information Mr. Van Orman has to rely on for the *possibility* that NWW
18 did not sell paraquat in the 1970s is: (1) he found no sales documents from that time period; and
19 (2) he was told by one former worker who conceivably would know whether paraquat was sold
20 during that time period that he did not believe it was. **But this information is grossly misleading**
21 **and inadmissible hearsay from an undesignated individual.** First, there was a fire in 2015
22

23 ¹ NWW may attempt to argue that NWW only has records indicating GRO was a “member” of the NWW co-op as
of 1998. But Mr. Van Orman admitted that he has no idea whether membership records even exist going back to the
1970s or 1980s, so the absence of any GRO membership records from that era is not dispositive. *See* Ex. 9, Van
Orman Dep. Tr. at 88:15-89:15.

1 destroying *all* sales documents (meaning that the absence of sales records is meaningless to this
 2 inquiry). Ex. 9, Van Orman Dep. Tr. at 35:13-36:13; 57:21-58:5; 242:15-243:5. Second, Mr. Van
 3 Orman did not ask the former worker, who is not a designated witness nor even been disclosed,
 4 whether NWW sold paraquat by the tradename that it was actually sold under. *Id.* at 35:13-36:13.

5 **F. Mr. Smith’s understanding of the risks of Paraquat and inadequacy of the**
 6 **label**

7 Mr. Smith believes he obtained a restricted use pesticide license from the state of
 8 Washington in 1977, which is around the time he first sprayed paraquat. Ex. 1, Smith Preservation
 9 Dep. Tr. Vol. 1 at 41:14-22; Ex. 8, Smith Disco. Dep. Tr. at 337:7-20. The test and licensing
 10 requirements covered restricted pesticide usage like paraquat included instructions on “training
 11 materials,” being taught to “adhere to the pesticide labels,” “to use proper personal protective
 12 equipment,” and “not to swallow or ingest pesticides.” Ex. 3, Smith Preservation Dep. Tr. Vol. 2
 13 at 12:2-22. Mr. Smith followed these instructions as best he could when using paraquat, including
 14 never drinking paraquat solution. The test to obtain the license covered a pamphlet that instructed
 15 workers “[h]ow to protect yourself from poisons, herbicides, and pesticides.” Ex. 1, Smith
 16 Preservation Dep. Tr. Vol. 1 at 41:23-42:9. In reviewing for the test, there was nothing Mr. Smith
 17 saw that suggested to him that he sprayed herbicides incorrectly or unsafely. *Id.* at 42:10-12.

18 On cross-examination by defense counsel, Mr. Smith confirmed that he read “portions of
 19 the paraquat label when [he] began using paraquat” and “understood the importance of following
 20 the paraquat label[.]” Ex. 3, Smith Preservation Dep. Tr. Vol. 2 at 13:12-19. However, Mr. Smith
 21 testified that despite understanding his training and the paraquat warning labels, there were times
 22 when using paraquat that it was impossible to fully comply with the training and/or labels, such as
 23 avoiding breathing it in when being used. *Id.* at 15:15-21. Notably, he testified that “if you can
 read [the labels],” he would follow the labels as best he could. *Id.* 22:11-16.

1 Mr. Smith, before clarifying, testified that he did not read the entire label. Ex. 8, Smith
 2 Disco. Dep. Tr. at 191-192, 215 (errata) and 336-341. However, he also testified that he was not
 3 able to read the entire paraquat label because the print was too small. Ex. 3, Smith Preservation
 4 Dep. Tr. Vol. 2 at 24:6-25:4.

5 Regarding the specific Chevron Ortho paraquat that Mr. Smith recalls working with, he
 6 testified he was familiar with the label. Ex. 8, Smith Disco. Dep. Tr. at 207:14-21. However, he
 7 also explained that he was not able to read all the particularized information on the label because
 8 the wording was too small:

9 A. You're telling me you can read that?

10 Q. Do you see the part where I read?

11 A. I could read that, but I can't.

12 Q. You've never read that information before?

13 A. No. I can't see it. It's too small.

14 *Id.* at 208:25-209:4.

15 Mr. Smith looked at the warning label, but the only warnings he recalled observing on the
 16 paraquat containers he used were the large and prominent skull and crossbones and language that
 17 paraquat was poisonous if consumed. Ex. 1, Smith Preservation Dep. Tr. Vol. 1 at 60:25-61:2.
 18 Mr. Smith followed that instruction and did not consume paraquat. Moreover, Mr. Smith testified
 19 unequivocally that he would not have used paraquat if he had known it could cause him to develop
 20 Parkinson's Disease. *Id.* at 60:22-24.

21 **1. Mr. Smith's approach to safety**

22 Mr. Hirst, Mr. Smith's boss at the EMA Orchard (where Mr. Smith worked for a few years
 23 in the 1980s and claims a few days' worth of paraquat spraying), testified to Mr. Smith's general
 approach to safety matters. Mr. Hirst recalls that Mr. Smith followed orders. Ex. 6, Dep. Tr. of

1 Hirst at page 44:19-21. Mr. Hirst testified that he knew Mr. Smith “very well” and he expected
2 that he “100 percent” followed warning label information. *Id.* at 43:11-17. He had no recollection
3 of Mr. Smith ever violating a safety rule at the orchard. *Id.* at 30:24-31:3.

4 Significantly, Mr. Hirst testified that he never recalls seeing anything on the label
5 discussing neurological issues/disorders, Parkinson’s Disease, paraquat getting into the human
6 brain, nor possible brain cell damage. *Id.* at 45:18-46:9. Not surprisingly, he said he would have
7 wanted to know about these risks (“you always want to know what, you know, the bad parts about
8 chemicals.”), and he would have ensured in his role as a supervisor that workers like Dale Smith
9 were aware of that information. *Id.* at 46:12-47:2. Mr. Hirst testified that if the label was clearer
10 and someone informed him of the possible neurological risks then paraquat would not have been
11 used. *Id.* at 124:15-24 (“... It wouldn’t have come on the orchard. We would have went another
12 route.”).

13 **III. EVIDENCE RELIED UPON**

14 Plaintiff relies upon the declaration of Charles P. Stern with attached exhibits and the
15 pleadings and record of this case.

16 **IV. ARGUMENT & AUTHORITY**

17 **A. Summary Judgment Standard of Review**

18 The standard of review for summary judgment motions is well settled. The moving party
19 bears the initial burden of showing the absence of an issue of material fact and an entitlement to
20 judgment as a matter of law. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225 (1989). If
21 the moving party does not sustain that burden, summary judgment should not be entered. *Hash v.*
22 *Children’s Orthopedic Hospital and Medical Center*, 110 Wn.2d. 912, 915-16 (1988). A material
23 fact is one upon which the outcome of the litigation relies in whole or in part. *Hope v. Larry’s*

1 *Markets*, 108 Wn. App. 185 (2001). In *Young*, the Washington State Supreme Court explained the
 2 burdens of the moving and non-moving parties as follows:

3 While CR 56(e) requires the nonmoving party to come forward with facts showing
 4 a material issue of fact, this does not occur unless and until the defendant meets his
 initial burden of showing that there is no issue of material fact. ...

5 A plaintiff, if he is the nonmoving party, must create an issue of fact in order to
 6 avoid summary judgment and an affidavit asserting any supportable, relevant fact
 7 inconsistent with the defendant's position will be sufficient to do so. The
 8 defendant's task, to show that there are no disputed facts, is necessarily much more
 assert some relevant facts will not necessarily meet his burden.

9 *Young*, 112 Wn.2d at 234-35.

10 **1. NWW has not shifted its burden**

11 NWW has not met its initial burden. A movant for summary judgment cannot fulfill its
 12 "genuine and substantial" and "difficult" initial burden by simply making conclusory factual
 13 statements in its motion, without any legitimate citation or corroborating evidence. *See, e.g.,*
 14 *Nicholson v. Deal*, 52 Wn. App. 814, 819 (1988). Rather, NWW could meet its initial burden
 15 only by "producing factual evidence showing that it is entitled to judgment as a matter of law."
 16 *Id.*

17 In addition, NWW must show that no reasonable juror could find for Plaintiff and,
 18 therefore, it is entitled to judgment as a matter of law. CR 56(c); *Grimwood v. Univ. of Puget*
 19 *Sound, Inc.*, 110 Wn.2d 355, 359-60 (1988). In reviewing NWW's motion and Plaintiff's
 20 response, the Court must view all facts and make all inferences from those facts in favor of the
 21 non-moving party. *Wilson v. Steinbach*, 98 Wn.2d 434, 437 (1982). The court may grant
 22 summary judgment only if reasonable persons could reach but one conclusion. *Simpson Tacoma*
 23 *Kraft Co v. Department of Ecology*, 119 Wn.2d 640, 646 (1992); *Eriks v. Denver*, 118 Wn.2d
 451, 456 (1992). "On motion for summary judgment the trial court does not weigh evidence or

1 assess witness credibility . . . ‘Our job is to pass upon whether a burden of production has been
 2 met, not whether the evidence produced is persuasive. That is the jury’s role, once a burden of
 3 production has been met.’” *Barker v. Advanced Silicon*, 131 Wn. App. 616, 624 (2006); *see also*
 4 *Haley v. Amazon.com Servs.*, 25 Wn. App. 2d 207, 222, 224 (2022) (instructing that a nonmoving
 5 party’s declarations must be taken as true at summary judgment unless inadmissible on other
 6 evidentiary grounds).

7 In the present case, NWW has not met its substantial burden to demonstrate the absence of
 8 an issue of material fact warranting jury consideration. It ignores record evidence and, worse, fails
 9 to accurately articulate the law. Rather, when the Court views all record facts and inferences in
 10 favor of Plaintiffs, abundant factual issues remain to be determined in this case.

11 **B. There is Substantial Evidence that NWW Sold Paraquat During the Relevant**
 12 **Time Period**

13 NWW currently sells paraquat and has sold spray herbicide chemicals in Washington for
 14 apple orchards since the 1930s. Two separate witnesses (Mr. Smith and Mr. Hirst) identified
 15 NWW as a seller of paraquat in the 1970s and 1980s in the Oroville area, and two additional
 16 witnesses (Mr. B. Frazier and Mr. P. Frazier) confirmed that NWW was a chemical and material
 17 supplier to apple orchards where Mr. Smith worked in the 1970s and 1980s. *See supra*, § II.C and
 18 E. Despite this, NWW has decided to challenge the sufficiency of this uncontroverted evidence.
 19 *See* NWW’s Mot. at 4-5. It bears noting that no witness nor document has been identified that
 20 supports NWW’s position.

21 **1. Direct and circumstantial evidence are reliable and acceptable forms**
 22 **of Evidence.**

23 According to the Washington Pattern Jury Instruction (WPI), evidence can be “either direct
 or circumstantial,” and the “law does not distinguish between direct and circumstantial evidence

1 in terms of their weight or value in finding the facts in this case. One is not necessarily more or
 2 less valuable than the other.” *See Exhibit 11*, WPI 1.03 Direct and Circumstantial Evidence, 6
 3 Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI 1.03 (7th ed.) In short, “circumstantial evidence
 4 is not any less reliable or probative than direct evidence.” *State v. Kintz*, 169 Wn.2d 537, 551, 238
 5 P.3d 470 (2010). And “[i]n determining the sufficiency of the evidence, circumstantial evidence
 6 is not to be considered any less reliable than direct evidence. *State v. Delmarter*, 94 Wn.2d 634,
 7 638, 618 P.2d 99, 101 (1980).

8 Here, the Court has the benefit of both direct and circumstantial evidence. There is direct
 9 evidence in the form of Mr. Smith and Mr. Hirst’s testimony that NWW sold and supplied paraquat
 10 during the relevant time to apple orchards where Mr. Smith was exposed to it. *See* § II.C-D. And
 11 NWW’s selling spray herbicides since the 1930s, its current sale of the product and its own
 12 president and CEO being unable to equivocally deny that NWW sold paraquat in the 1970s is
 13 circumstantial evidence that NWW was selling paraquat in the 1970s. *See* § II.C. and E.
 14 Considering this compelling combination of evidence, it is not a surprise that Mr. Van Orman was
 15 unable to deny that NWW sold paraquat during the relevant time period.

16 **C. The WPLA does not Apply to Plaintiff’s claims against NWW**

17 NWW is quick to argue that Plaintiff’s common law negligence claims are “pre-empted by
 18 the WPLA,” but it fails to even consider whether the WPLA applies to Mr. Smith’s claims against
 19 NWW. *See* NWW’s Mot. at 5. But because Mr. Smith’s claims related to NWW involve its sale
 20 and supply of paraquat to the GRO in the 1970s, before the WPLA went into effect, the WPLA
 21 does not apply.

22 “The WPLA supplants common law claims or actions based on harm caused by a product
 23 that arise **on or after its effective date, July 26, 1981.**” *Macias v. Saberhagen Holdings, Inc.*,

1 175 Wn.2d 402, 408 (2012) (emphasis added); *Fagg v. Bartells Asbestos Settlement Tr.*, 184 Wn.
 2 App. 804, 812 (2014). When a plaintiff's alleged exposure to injury-causing products is prolonged
 3 or continuous in nature, as in the present case, Washington courts consider when "substantially
 4 all" of the exposure occurred in determining when the claim arises." *Macias*, 175 Wn.2d at 408–
 5 09; *Braaten v. Saberhagen Holdings*, 165 Wn.2d 373, 381 n. 1, 4 (2008); *Koker v. Armstrong*, 60
 6 Wn. App. 466, 472 n. 4 (1991). *Fagg*, 184 Wn. App. at 812. If substantially all a plaintiff's
 7 exposure to that defendant's product occurred before July 26, 1981, the WPLA does not apply.
 8 *Fagg*, 184 Wn. App. 804, 815. Here, **all of Mr. Smith's usage and exposure to NWW supplied**
 9 **paraquat occurred in the 1970s while he was at GRO.** See § II.C.-D. Because Mr. Smith was
 10 only exposed to paraquat supplied by NWW before July 26, 1981, the WPLA does not apply to
 11 his claims against NWW. *Fagg*, 184 Wn. App. at 818 ("Therefore, we conclude that because
 12 substantially all of Fagg's exposure to CSK's asbestos-containing products occurred before July
 13 26, 1981, the WPLA does not apply with respect to Fagg's claims against CSK.").

14 **1. Because the WPLA does not apply, strict liability may be imposed on a**
 15 **seller like NWW under § 402A of the Restatement (Second) of Torts**

16 For causes of action arising before the effective date of RCW Chapter 7.72, Washington
 17 courts have held that both strict liability and negligence may be imposed on a dealer of goods
 18 under § 402A of the Restatement (Second) of Torts. *Thompson v. Rockford Mach. Tool Co.*, 49
 19 Wn. App. 482, 744 P.2d 357 (1987); *see also Simonetta v. Viad Corp.*, 165 Wn.2d 341, 348 (2008);
 20 *Macias*, 175 Wn.2d at 409. Section 402A declares that a product, though faultlessly manufactured
 21 and designed, may not be reasonably safe when placed in the hands of the ultimate user without
 22 first giving an adequate warning concerning the way to safely use the product. Restatement
 23 (Second) of Torts § 402A (1965).

Liability is imposed on parties in the chain of distribution, including sellers, wholesale or retail dealers or distributors, such as NWW. *Simonetta*, 165 Wn.2d at 348–49, 354–55 (2008). Under § 402A, strict liability applies equally well to cases involving manufacturing defects, design defects, and failures to warn. *Id.* Section 402(a) is intended to apply to “those in the chain of distribution,” *i.e.*, a “manufacturer, ... dealer or distributor” of the product. *Seattle–First Nat’l Bank v. Tabert*, 86 Wn.2d 145, 148 (1975); *see Zamora v. Mobil Corp.*, 104 Wn.2d 199, 206 (1985) (§ 402A is broadly interpreted beyond manufacturers to apply “to all others in the chain of distribution”); *see also Braaten v. Saberhagen Holdings*, 165 Wn.2d 373, 384 (2008). A seller has a duty to “keep abreast of scientific knowledge, discoveries, advances, and research in the field, and is presumed to know what is imparted thereby.” *Koker v. Armstrong Cork, Inc.*, 60 Wn. App. 466, 476–78 (1991), *review denied by, Koker v. Armstrong Cork*, No. 23408-1-I, 1991 Wash. LEXIS 587 (Wash. July 3, 1991); *see also Lockwood*, 109 Wn.2d at 269.

In sum, under the pre-WPLA² analysis, which is the applicable law under the facts of this case, NWW is liable for its sale of paraquat used by Mr. Smith.

2. Even if the WPLA does apply to Plaintiff’s claims against NWW, liability can be imputed to NWW as a product seller

Assuming, *arguendo*, that NWW’s unsupported assumption is correct that the WPLA covers Mr. Smith’s claims against NWW, NWW can still be held liable. To wit, RCW 7.72.040 articulates specific instances when a product seller, such as NWW, can be held liable for injuries stemming from its product caused by either “the negligence of such product seller” or if “[t]he product seller provided the plans or specifications for the manufacture or preparation of the product

² The WPLA not applying has a host of practical implications not discussed in this brief.

1 and such plans or specifications were a proximate cause of the defect in the product[.]” RCW
2 7.72.040(1)(a), (2(d).

3 Notably, NWW’s Motion only mentions and focuses on RCW 7.72.040(2)(a-b). NWW’s
4 Mot. at 6. However, the analysis does not stop there. In *Buttelo v. S.A. Woods-Yates Am. Mach.*
5 *Co.*, 72 Wn. App. 397, 864 P.2d 948 (1993), the court ruled that when “the consuming public
6 typically looks to the seller for advice on selecting, operating, and maintaining the product” at
7 issue, then that fact “justif[ies] imposing on product sellers a duty to protect the public from unsafe
8 products.” *Buttelo*, 72 Wn. App. at 403. The *Butello* court further explained that this policy reason
9 for imposing such a duty on product sellers stems from the seller’s “expertise that would induce a
10 buyer’s reliance.” *Id.*

11 In the context of the WPLA, Washington courts have analyzed the *Buttelo* ruling and
12 deemed that imposing manufacturers’ duties on a “product seller” is justified when “the consuming
13 public typically looks to the seller for advice in the selection, operation and maintenance of the
14 product[.]” *Bostwick v. Ballard Marine, Inc.*, 127 Wn. App. 762, 767–68 (2005). Reliance on the
15 product seller by the product user imputes a duty on the product seller. *Id.*

16 **a. NWW’s customers and users of spray chemicals relied on the**
17 **advice and instructions from NWW.**

18 Mr. Van Orman testified at length about NWW’s role providing products and services to
19 users like GRO and Mr. Smith. Those customers sought and relied on NWW’s expertise and
20 advice regarding spray chemicals. He stated that NWW and its employees are “experts in the
21 products [NWW] sell[s]” and “experts in the services that [NWW] offer[s].” Ex. 9, Dep. Tr. of
22 Van Orman at 47:2-6. Mr. Van Orman confirmed that this expertise applies to paraquat. *Id.* at
23 48:13-17. Crucially, he also confirmed that NWW’s customers rely on NWW for its advice and
recommendations related to its products and services:

1 Q. And those farmers and customers -- or farmer customers is what I'll call
2 them -- they come to you for products, correct?

3 A. Yes.

4 Q. They hire you for services, correct?

5 A. Yes.

6 Q. They rely upon you?

7 A. Some do, yes.

8 Q. They rely upon you?

9 A. They rely on us to make recommendations for them.

10 Q. You stole the words out of my mouth. They rely upon you to make
11 recommendations for using particular products, correct?

12 A. Yes.

13 Q. And in making those recommendations, what Northwest Wholesale is doing
14 is giving advice about the application of those products to its farmer
15 customers, right?

16 A. Yes.

17 Q. This is advice that Northwest Wholesale has given orchardists in the region
18 in the 1960s and the 1970s and the 1980s, right?

19 A. I believe so, yes.

20 *Id.* at 48:22-49:22.

21 According to Mr. Van Orman, this relationship of reliance and advice-seeking existed in
22 the 1970s and 1980s when Mr. Smith was working with paraquat. *Id.* at 50:8-15. Accordingly,
23 under the controlling authority of *Buttelo* and *Bostwick*, there is evidence of reliance and advice
that imputes liability to NWW even if the WPLA controls.

**b. NWW was negligent in its sale and supply of chemicals,
including paraquat.**

1 Mr. Van Orman confirmed that NWW was aware of potential risks related to pesticides
 2 going back to the relevant time. During his deposition, Mr. Van Orman confirmed that Mr. Larry
 3 Peterson (“Mr. Peterson”) was “field consultant” employed by NWW. Ex. 9, Dep. Tr. of Rodney
 4 Van Orman at 97:22-98:5. In 1981, Mr. Peterson stated that NWW knew what products it was
 5 supplying its customers, and that NWW “downplays our pesticides because the environmentalists
 6 get upset.” *Id.* at 98:12-23.³ Mr. Van Orman agreed that at least by 1981, NWW understood that
 7 there were “concerns . . . regarding the use of pesticides[.]” *Id.* at 100:10-16. NWW was on notice
 8 of potential hazards related to chemicals it sold/supplied during the relevant time.

9 Despite this understanding, Mr. Van Orman admits that since 1937 it has never had an in-
 10 house safety department, medical department, or industrial hygienist on staff to monitor and ensure
 11 worker safety. Ex. 9, Dep. Tr. of Rodney Van Orman at 78:19-80:25. NWW has also never
 12 endeavored to evaluate potential exposures to paraquat experienced by its own employees or
 13 customers. *Id.* at 81:1-8. It never evaluated its workers or end-user’s usage of paraquat to ensure
 14 paraquat was being used properly and according to the label. *Id.* at 81:13-17. It never conducted
 15 any tests on whether paraquat causes neurological issues or investigated whether its own workers
 16 or end-users were suffering from neurological issues after using paraquat. *Id.* at 81:18-82:11.
 17 NWW never had a policy to ensure its workers or end-users used spray products properly. *Id.* at
 18 118:22-119:12.

19 **D. The Washington Summary Judgment Standard for Toxic Exposure Cases is**
 20 **Well Established, and NWW has not Met its Burden. Meanwhile Plaintiff has**
 21 **Ample Evidence to Demonstrate Exposure and Proximate Cause**

22 **1. NWW’s motion fails to meet its burden demonstrating an absence**
 23 **proximate causation supported by the record.**

³ Mr. Peterson’s statement is not hearsay. It is not offered to prove the truth of the matter asserted (that NWW “downplayed” pesticides). But it demonstrates hazards associated with pesticides that NWW was aware of, i.e. notice. *See* ER 801(c). Mr. Peterson’s statement is an admission. ER 801(d)(2). If hearsay, it is an exception because it is contained with a document more than 20 years old. ER 803(a)(16).

1 A movant for summary judgment cannot fulfill its “genuine and substantial” and “difficult”
 2 initial burden by simply making conclusory factual statements in its motion, without any legitimate
 3 citation or corroborating evidence. *See, e.g., Nicholson v. Deal*, 52 Wn. App. 814, 819 (1988).
 4 Rather, NWW must satisfy this initial burden by “producing factual evidence showing that it is
 5 entitled to judgment as a matter of law.” *Id.* Here, NWW has failed to do this.

6 NWW’s “Statement of Issues” includes the conclusory argument that “Plaintiff has failed
 7 to prove that his Parkinson’s disease was proximately caused by NWW’s own negligence or breach
 8 of an express warranty.” *See* NWW’s Mot. at 3. Regarding negligence, NWW makes no argument
 9 whatsoever and cites no evidence. *See* Def.’s Mot. at 7-8. Rather, NWW simply includes a section
 10 titled “Plaintiff Has Failed to Provide Any Evidence that His Parkinson’s Disease was Proximately
 11 Caused by NWW’s Negligence Apart from the Manufacturers” and then, strangely, copies a few
 12 paragraphs from Plaintiff’s Complaint and inserts those statements as its argument. *Id.*

13 Plaintiff does not know if NWW intended on citing to the record or law but simply forgot
 14 to do so. Regardless, as it currently stands, NWW’s conclusory statement, unsupported by any
 15 citation or legal authority falls far short of meeting the burden necessary to demonstrate the
 16 absence of a material issue of fact—it does not even shift the burden to Plaintiff. This glaring
 17 omission calls to mind the Washington Supreme Court’s instruction in *DeHeer v. Seattle Post-*
 18 *Intelligencer*, 60 Wn.2d 122, 126 (1962): “Where no authorities are cited in support of a
 19 proposition, the court is not required to search out authorities, but may assume that counsel, after
 20 diligent search, has found none.”

21 **2. Product identification and substantial factor causation**

22 Washington courts apply the “substantial factor” test in toxic injury cases. *Mavroudis v.*
 23 *Pittsburgh Corning Corp. et. al.*, 86 Wn. App. 22, 29-32 (1997); *see also Exhibit 12*, comment to

WPI 15.02 at 2; *Hue v. Farmboy Spray Co., Inc.*, 127 Wn.2d 67, 87–88 (1995). This means that a plaintiff in a toxic injury case is entitled to recover from a defendant if there is evidence that exposure to a particular defendant’s product was a substantial factor in causing the injury in question. *Id.* “[O]nce a plaintiff has demonstrated that the defendant’s acts or omissions have increased the risk of harm to another, such evidence furnishes a basis for the jury to make a determination as to whether such increased risk was in turn a substantial factor in bringing about the resultant harm.” *Mohr v. Grantham*, 172 Wn.2d 844 (2011) (internal citations omitted).

3. Proximate cause – failure to warn

The adequacy of a warning will be a question of fact. *See Little v. PPG Indus., Inc.*, 92 Wn.2d 118, 123 (1979) (citing *Haysom v. Coleman Lantern Co.*, 89 Wn.2d 474 (1978)). In a failure to warn case, a showing that the plaintiff would have heeded a warning had one been given can establish cause in fact. *Ayers v. Johnson & Johnson Baby Prod. Co.*, 117 Wn.2d 747, 753 (1991). This statement of law applies for both WPLA and pre-WPLA claims. *Budd v. Kaiser Gypsum Co., Inc.*, 21 Wn. App. 2d 56, 73-74, review denied, 199 Wn.2d 1030 (2022). For NWW, the duty to warn exists, even if the danger is unknown to the supplier and the product has been faultlessly manufactured and designed, if it is not reasonably safe when used in the absence of warnings. *Teagle v. Fischer & Porter Co.*, 89 Wn.2d 149 (1977).

The adequacy of warning is a question of fact, and in *Little v. PPG Industries, Inc.*, 92 Wn.2d 118 (1979), the court approved jury instructions that set out several aspects of the duty to warn, including:

- (1) advising of the nature of the danger;
- (2) the seriousness of the consequences of improper use, and;
- (3) measures to take to avoid the danger.

Appellate courts have established that Plaintiff can rely on opinion testimony at trial from an expert about what establishes an adequate versus inadequate warning label for a toxic product. *Budd* 21 Wn. App. 2d at 73-74. For the Smith matter, Plaintiff's human factors expert, Cynthia Rando, provides this testimony about the paraquat label:

[T]he labels primarily focused on the acute hazard associated with high dose swallowing and ingestion, as well as the acute and immediately apparent effects of the skin or eye contact, and do not address any longer-term, delayed, or chronic health hazard risks, nor risks that might be associated with ordinary use in which ingestion or contact is not obvious.... Given the prominence and emphasis on this specific hazard on the label, the user is left to believe that if they do not swallow this chemical, nor experience significant eye or skin contact accompanied by immediate and obvious symptoms, they will not incur harm from its general use.

See **Exhibit 10**, Expert Report of Cynthia Rando, dated Oct. 14, 2022 ("Rando Report") at 23.

Courts weigh heavily whether the plaintiff has been informed of the injury-causing agent's propensity to cause a particular harm, and presume that if the plaintiff knew about those harms then the plaintiff would have treated the product with greater care. *Ayers By & Through Ayers v. Johnson & Johnson Baby Prods. Co., a Subsidiary of Johnson & Johnson Co.*, 117 Wn.2d 747, 754, 818 P.2d 1337, 1341 (1991). It is uncontroverted that Mr. Smith testified that he did not know that paraquat could cause Parkinson's Disease, and he would not have used paraquat if he had known it could cause him to develop this awful disease. Ex. 1, Smith Preservation Dep. Tr. Vol. 1 at 60:22-24. Similarly, Mr. Smith testified that while he reviewed the legible portions of the label, most of the label's print was too small and illegible. Ex. 8, Smith Disco. Dep. Tr. at 208:22-210:5. It is also uncontroverted that the paraquat label never included any information informing Mr. Smith that it could cause any neurological damage, including Parkinson's Disease. See § II.F.

4. Application of law to fact

1 Plaintiff has presented this Court with even more evidence, *supra*, showing that a genuine
2 issue of material fact exists with regard to Mr. Smith's exposure to paraquat supplied by NWW
3 and whether those exposures proximately caused his Parkinson's Disease. Viewing the evidence
4 presented in a light most favorable to Plaintiff, it is clear that Mr. Smith used paraquat at GRO and
5 NWW supplied that paraquat, or at the very least, creates a genuine issue of material fact to present
6 to the jury.

7 The expert testimony in this case establishes that Mr. Smith's exposure to paraquat for as
8 few as 25 days increased his risk of developing Parkinson's Disease and was a proximate cause
9 and substantial factor in causing his disease. According to Mr. Smith's own testimony, he worked
10 with and was exposed to paraquat for at least 40-60+ days at GRO. *See* § II.D. Of course, this is
11 in addition to all the other bystander and indirect exposures identified by Mr. Smith for when he
12 simply lived and worked on the orchard when paraquat was being applied by other workers. *Id.*
13 And it is uncontroverted that had the label included a warning about Parkinson's Disease, Mr.
14 Smith would not have used it.

15 This case does not require speculation to find that Mr. Smith was exposed to NWW's
16 paraquat. He identified the product. *Id.* He identified NWW. *Id.* Other witnesses identified
17 NWW as both a paraquat seller during that time and/or a chemical spray seller. *Id.* NWW still
18 sells paraquat, and paraquat has been used in the apple growing industry since the 1960s. *See* §
19 II.E. Mr. Smith's identification of NWW's paraquat at GRO coupled with the substantial
20 additional evidence, direct and circumstantial, are sufficient to raise an inference and genuine issue
21 of material fact as to whether Mr. Smith was exposed to NWW's paraquat and it proximately
22 caused his injuries.

23 **E. Implied and Express Warranties**

As described, *supra*, Mr. Smith’s claims against NWW do not fall under the WPLA, so whether WPLA recognizes implied warranties is irrelevant. *See* § IV.C. However, even assuming the WPLA did apply, the Court of Appeals has already ruled **in this case** that privity is not required for plaintiffs like Mr. Smith to bring product liability claims based on breach of implied and/or express warranties. *Smith v. Chevron U.S.A., Inc.*, 25 Wn. App. 2d 1029 (2023).

The WPLA specifically states that “[a] claim may be asserted under this chapter even though the claimant did not buy the product from, or enter into any contractual relationship with, the product seller.” *Id.* (citing RCW 7.72.010(5)). The Washington State Supreme Court agrees and has clarified that prior to the WPLA’s effectiveness, privity was not required to bring such a claim:

Before the WPLA was enacted in 1981, privity rules posed no barrier to product liability plaintiffs. Washington law permitted plaintiffs a tort remedy for any damages they suffered, including damages commonly characterized as “economic loss.” Plaintiffs similarly are free from privity rules under the WPLA, see RCW 7.72.010(5), but in a more limited set of circumstances than under the common law.

Washington Water Power Co. v. Graybar Elec. Co., 112 Wn.2d 847, 856-57, 774 P.2d 1199 (1989)*8.

1. NWW breached implied warranties

Article 2 of the UCC applies to contracts for the sale of goods, which are moveable at the time of sale – such as paraquat. *Berschauer Phillips Const. Co. v. Concrete Sci. Servs. of Seattle, L.L.C.*, 135 Wn. App. 1025, *2 (2006). The implied warranty of merchantability applies to sales by merchants such as NWW, who deal in goods of the kind. *Id.* Under that warranty, the goods must be fit for the ordinary purpose for which they are used. *Id.* Whether NWW breached this warranty is a factual inquiry that depends on many factors, such as the usage in the trade and the characteristics of similar goods. *Id.* The implied warranty of fitness for a particular use arises

1 when a buyer makes known a particular intended use for the goods and relies upon the seller's
2 expertise about fitness in purchasing the goods for that purpose. *Id.* at 3.

3 In this case, there is evidence that GRO was purchasing paraquat from NWW for the known
4 and obvious purpose of applying it to facilitate the cultivation of apples, and customers like GRO
5 relied on the experience, expertise and advice of NWW to select and utilize paraquat – which
6 amount to implied warranties. *See* §§ II., IV.C.2.a.

7 Unless the evidence is undisputed, proximate causation is a factual issue for the jury.
8 *Berschauer Phillips Const. Co.*, at *3. NWW could have disclaimed the implied warranties through
9 an express disclaimer, but to successfully disclaim implied warranties, a disclaimer must be in
10 writing and conspicuous, and must use words that explicitly disclaim the warranties, like “as is.”
11 *Id.* NWW presented zero evidence that it disclaimed these warranties. As such, the existence of
12 implied warranties, Mr. Smith’s reliance on them and whether breach proximately caused Mr.
13 Smith’s Parkinson’s Disease are factual issues for the jury to decide and not to be decided at the
14 summary judgment phase of this litigation.

15 V. CONCLUSION

16 Based on the foregoing, Defendant NWW’s Motion for Summary Judgment should be
17 denied in its entirety.

18 Dated this 16th day of January, 2025.

NACHAWATI LAW GROUP

19 By /s/ Charles P. Stern

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I certify that this document contains 8,131 words, in compliance with the Local Rules.

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And

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THE HONORABLE JASON POYDRAS

Trial Date: May 5, 2025

Hearing Date: March 21, 2025

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DALE SMITH,

Plaintiff,

v.

CHEVRON U.S.A., INC., et al.,

Defendants.

NO. 21-2-08160-2 SEA

DECLARATION OF CHARLES P.
STERN IN SUPPORT OF
PLAINTIFF'S RESPONSE TO
DEFENDANT NORTHWEST
WHOLESALE, INC.'S MOTION
FOR SUMMARY JUDGMENT

I, **CHARLES P. STERN**, declare and state as follows:

1. I am one of the attorneys representing Plaintiff in the above-caption case. I make this statement based on personal knowledge.
2. Attached as **Exhibit 1**, are true and correct excerpts of the preservation deposition transcript of Dale Smith, Vol. I, dated May 16, 2024.
3. Attached as **Exhibit 2**, are true and correct excerpts of the deposition transcript of Defendant's expert Kassim Al-Khatib, Ph.D., dated September 30, 2024.
4. Attached as **Exhibit 3**, are true and correct excerpts of the preservation deposition transcript of Dale Smith, Vol. II, dated May 17, 2024.
5. Attached as **Exhibit 4**, are true and correct excerpts of the deposition transcript of Bill Frazier, dated May 30, 2024.
6. Attached as **Exhibit 5**, are true and correct excerpts of the deposition transcript of Patrick Frazier, dated May 13, 2024.
7. Attached as **Exhibit 6**, are true and correct excerpts of the deposition transcript of Leroy Hirst, dated July 12, 2024.

8. Attached as **Exhibit 7**, is a true and correct copy of the Declaration of Anthony Lang, OC, MD, FRCP, FAAN, FCAHS, FRSC, dated August 19, 2024.
9. Attached as **Exhibit 8**, are true and correct copies of excerpts of various discovery deposition transcripts of Dale Smith, dated December 18-20, 2023 and February 5-8, 2024.
10. Attached as **Exhibit 9**, are true and correct excerpts of the deposition transcript of Rodney Van Orman, dated September 25, 2024.
11. Attached as **Exhibit 10**, are true and correct excerpts of the Expert Report of Cynthia Rando, dated Oct. 14, 2022.
12. Attached as **Exhibit 11**, is a true and correct copy of the Washington Pattern Jury Instructions 1.03.
13. Attached as **Exhibit 12**, is a true and correct copy of the WPI 15.02 and referenced comment.
14. Attached as **Exhibit 13** is a [Proposed] Order Denying Northwest Wholesale, Inc.'s Motion for Summary Judgment.

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

SIGNED on this the 16th day of January, 2025, at Dallas, Texas.

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Counsel for Plaintiffs

EXHIBIT T

DECLARATION OF SERVICE

I, Vicki Milbrad, declare and state as follows:

I am and at all times herein a citizen of the United States, a resident of King County, Washington, and am over the age of 18 years.

On the 17th day of November, 2021, I caused to be served true and correct copies of the foregoing document on the following:

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, this 17th day of November, 2021.

s/ Vicki Milbrad

Vicki Milbrad
 Legal Assistant